

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LVB-OGDEN MARKETING, LLC,)	
)	
Plaintiff,)	CASE NO. C18-243 TSZ
v.)	
)	SEATTLE, WASHINGTON
DAVID S. BINGHAM, et al.,)	May 3, 2018
)	
Defendants.)	MOTION HEARING
)	
)	

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff:	TAMMY ANN TSOUHAS JONATHAN J. FARIA HEATHER CANNER Kirkland & Ellis LLP 333 S. Hope Street Los Angeles, CA 90071 JEFFREY L. WILLIAN Kirkland & Ellis 300 North Lasalle Chicago, IL 60654 WILLIAM RANDOLPH SQUIRES, III Corr Cronin Michelson Baumgardner Fogg & Moore LLP 1001 4th Avenue, Suite 3900 Seattle, WA 98154-1051
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Henry Dean, and
Cicilia S. Elali:

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May 3, 2018

9:05 a.m.

PROCEEDINGS

THE COURT: Good morning, ladies and gentlemen. It looks like we have a full courtroom today. Please be seated.

Will the clerk please call the calendar.

THE CLERK: Case No. CR18-243-TSZ, LVB-Ogden Marketing, LLC v. Bingham, et al.

Counsel, please make your appearances for the record.

MR. SQUIRES: Your Honor, Randy Squires of Corr Cronin for the plaintiff, and to my side is Jeff Willian of Kirkland & Ellis.

MR. WILLIAN: Good morning, Your Honor.

MR. FARIA: John Faria of Kirkland & Ellis.

THE COURT: Just a moment. I have a seating chart here, and I'm wishing to make sure it's right.

Next to you, Mr. Squire, is?

MR. WILLIAN: Jeff Willian, W-i-l-l-i-a-n, as in "Nancy."

MR. FARIA: Jonathan Faria from Kirkland & Ellis.

MS. TSOUMAS: Good morning, Your Honor. Tammy Tsoumas from Kirkland & Ellis as well. I'm happy to spell that for you.

THE COURT: No, I have it.

MS. CANNER: Your Honor, Heather Canner also from Kirkland & Ellis.

1 THE COURT: And who do you represent?

2 MS. TSOUHAS: We all represent LVB-Ogden Marketing.

3 THE COURT: Well, apparently the plaintiff is well
4 represented. Good morning.

5 Let's see who's here from the defense.

6 MR. McGLOTHIN: Good morning, Your Honor. My name is
7 Dennis McGlothlin from the Western Washington Law Group. I
8 represent Henry Dean individually, Cicilia Elali
9 individually, and BGH Holdings. To my left is Henry Dean; to
10 his left is R. Bruce Johnston; to his left is Nathan Arnold;
11 to his left is Scott Henrie; and to his left is Manish Borde.

12 THE COURT: Do all of you represent all of the
13 defendants?

14 MR. McGLOTHIN: No, Your Honor.

15 THE COURT: So for the record, you need to tell me
16 who you represent.

17 MR. McGLOTHIN: I represent Henry Dean individually,
18 Ms. Cicilia Elali individually, and BGH Holdings, LLC.

19 THE COURT: Okay. Mr. Johnston, who do you
20 represent?

21 MR. JOHNSTON: Your Honor, Mr. Arnold and I represent
22 David Bingham, Sharon Bingham, Christopher Bingham,
23 Christopher Bingham, Cherish Bingham, Kelly Bingham, Bingo
24 Investments, CCRB Enterprises.

25 THE COURT: Is there anybody you don't represent

1 other than Mr. Dean?

2 MR. JOHNSTON: I don't represent Ms. Park, HyTech
3 Power, Ms. Dean, the 2007 Trust, or BDH Holdings.

4 I represent the original defendants in the case, I guess,
5 would be the best way to say it.

6 THE COURT: Let me just clarify. You represent the
7 judgment creditors on the judgment?

8 MR. JOHNSTON: That's correct.

9 THE COURT: All right.

10 MR. HENRIE: Scott Henrie, Williams Kastner.
11 Mr. Borde and I myself represent Henry Dean as the trustee of
12 the 2007 Sharon Bingham Trust. We represent Park Place
13 Motors and High Tech Power, Inc.

14 THE COURT: All right. Well, good morning,
15 everybody.

16 This hearing was scheduled for today, to consider a motion
17 to dismiss the complaints and a motion for a preliminary
18 injunction, and as the lawyers know in connection with those
19 two matters, the parties have provided the court with a stack
20 of materials and documents and declarations that's probably a
21 foot and a half high, and the court has reviewed them and was
22 and is prepared to hear oral argument on those two motions.

23 But we have an elephant in the courtroom. That elephant
24 is called jurisdiction, and as a result of the court's recent
25 requests that the plaintiff provide additional information as

1 to who the plaintiff is and whether or not we have
2 jurisdiction, we have received plaintiff's -- first, we have
3 plaintiff's original corporate disclosure statement,
4 Docket 2, filed in February of this year. Then we have
5 plaintiff's amended corporate disclosure statement filed on
6 April 26th of this year. And, of course, the court then
7 asked for more information, and yesterday we received yet a
8 plaintiff's second amended corporate disclosure statement,
9 and we have attempted -- I'm not sure we've done a perfect
10 job on this -- to create a chart, which I've given you, to
11 try and understand who the plaintiff is, who are its owners,
12 and whether or not we have jurisdiction.

13 Here's where I am at the moment in connection with this
14 issue, and I'll hear from each side. Basically, this case
15 was filed here alleging diversity, and I think it's clear
16 that the court needs absolute diversity in order to proceed
17 to have jurisdiction, except for the limited area of
18 ancillary jurisdiction to enforce a judgment.

19 The plaintiff's last disclosure statement is not yet
20 satisfactorily explaining whether we have jurisdiction --
21 diversity jurisdiction. I think what it tells us is that we
22 do not have diversity jurisdiction. The plaintiff can
23 respond in a moment.

24 But Docket 77, your latest disclosure, which you filed
25 yesterday, suggests that there are at least three problems

1 with diversity. One is, you tell us that there are two
2 national persons who are invested in a limited partnership
3 who reside in Washington. Then you tell us you have one
4 investor corporation with a principal place in Washington,
5 and you tell us that that amounts to 0.3 percent of the fund.

6 I think that would eliminate diversity jurisdiction.

7 The plaintiff also tells us that there are three remaining
8 members of Northwest LLC. Northwest LLC is, apparently, the
9 owner of Corus Construction Venture, which is the owner of
10 plaintiff.

11 And with respect to these three remaining members of
12 Northwest LLC -- I guess the grandparent of the plaintiff --
13 what the plaintiff tell us is that they're subject to a
14 confidentiality agreement and we're not going to tell you who
15 the investors are. That's, basically, what you're telling me
16 when you file this.

17 Mr. Squires, you signed this complaint. I don't think you
18 have diversity, and your submission yesterday suggests that I
19 don't have diversity. If I don't have diversity, I
20 believe -- and, again, we've been doing research last night
21 and this morning, but I think the rule is that I would not
22 have anything but ancillary jurisdiction, and the ancillary
23 jurisdiction would only relate to the judgment. It can only
24 relate to the judgment debtors. It could not pick up
25 Mr. Dean, for example, who is not a judgment debtor. And it

1 would be limited -- and I refer you to a case, which I think
2 we've handed out to you, hopefully -- oh, we didn't. We're
3 going to hand it out to you right now.

4 This is a Second Circuit case. It's unfortunate that we
5 have to do a little of this ad hoc and without your having
6 the benefit of study, but the plaintiff has caused this
7 problem. But *Epperson*, Second Circuit case, 242 F.3d 100,
8 deals with this issue.

9 If you go to page 4 of the handout, at the bottom of the
10 left side, it says, "The court also notes that it never has
11 authorized exercise of ancillary jurisdiction in a subsequent
12 lawsuit to impose an obligation to pay an existing federal
13 judgment on a person not already liable for that judgment,"
14 citing, I think, the *Peacock* case, which is a Supreme Court
15 case.

16 And then down at Headnote 12, "*Peacock* does not hold that
17 fraudulent conveyance claims brought in a subsequent action
18 require independent jurisdiction." The court refused to
19 characterize the lawsuit as a fraudulent conveyance.

20 And then if you go -- the bottom line is, I believe, under
21 this case and under the *Peacock* case and the Supreme Court
22 jurisprudence, I need complete diversity. I do not believe
23 I have complete diversity. I think I must dismiss all of the
24 lawsuit, except, perhaps, treat it under ancillary
25 jurisdiction against the original judgment debtors, and

1 solely for the purpose of attacking the trust, which I think
2 they're entitled to do, in an effort to enforce their
3 judgment.

4 So Mr. Squires, what do you think?

5 MR. SQUIRES: Your Honor, I'm going to yield to
6 Mr. Willian on this. I will say, just to set the table a
7 little bit, that the ownership structure of this entity is
8 one of the most complex I've ever seen.

9 THE COURT: Well, but you signed this complaint.

10 MR. SQUIRES: I did.

11 THE COURT: Isn't it your obligation to explore
12 diversity before you allege it, sir?

13 MR. SQUIRES: Well, it is.

14 THE COURT: Well, and if you had done that, would you
15 not have found what you disclosed in the filing yesterday?

16 MR. SQUIRES: I'm not sure, Your Honor. It would
17 have taken -- your chart is useful and very accurate, as far
18 as it goes. The actual ownership chart places these
19 investors at the seventh level above the --

20 THE COURT: Does it matter?

21 MR. SQUIRES: Well, Your Honor, I know what the Ninth
22 Circuit decision says, that -- that you're bound to follow.

23 THE COURT: And which decision is that?

24 MR. SQUIRES: That's Judge Fletcher's decision that
25 you cited to us when you asked us to come up with this

1 additional information.

2 THE COURT: Well, this whole idea of an LLC and who
3 owns the LLC and whether it creates or allows us to have
4 diversity jurisdiction, but the law has been settled for many
5 years, that, for diversity, the LLC's members' citizenship is
6 what we have to look at. Do you agree with that?

7 MR. SQUIRES: I do agree with it.

8 THE COURT: All right. And you represent the LLC?

9 MR. SQUIRES: I do.

10 THE COURT: And so I think it's your obligation, as
11 the lawyer, to explore whether you have diversity. You pled
12 diversity.

13 MR. SQUIRES: Yes, we did.

14 THE COURT: And you don't have diversity, do you?

15 MR. SQUIRES: It does not appear that we do.

16 THE COURT: And shouldn't I dismiss all aspects of
17 the case, other than your seeking a right to have a
18 declaratory judgment as part of your enforcement of a
19 judgment?

20 MR. SQUIRES: I'll defer to Mr. Willian on this, Your
21 Honor.

22 THE COURT: Mr. Willian is going to provide cover for
23 you?

24 MR. SQUIRES: He's going to provide cover for me,
25 and, perhaps, represent me in this.

1 THE COURT: Let me just explain to you. I have
2 become keenly, keenly aware of this whole LLC diversity
3 problem because about a year ago I tried a case for a week
4 and a half involving LLCs. And it went to judgment, jury
5 verdict. It's on appeal.

6 Well, the first thing the Ninth Circuit does when they
7 take a look at an appeal is they look at the LLC and say,
8 wow, do we have jurisdiction? They sent that case back to me
9 and said, "Judge, dig a little deeper. Find out whether you
10 have jurisdiction. We're digging."

11 But it alerted me, then, to this problem in your case.

12 All right. Mr. Willian, what jurisdiction, if any, do I
13 have?

14 MR. WILLIAN: You have the federal ancillary
15 jurisdiction, as you stated. Your Honor, we agree with you
16 there is no diversity here, and this is information we
17 learned just a day or so ago.

18 THE COURT: You learned it a day or so ago because I
19 pushed you --

20 MR. WILLIAN: Absolutely.

21 THE COURT: -- but this is something lawyers do when
22 they file complaints. They allege diversity because they've
23 done an investigation. What investigation did your firm do?

24 MR. WILLIAN: We went three layers down, Your Honor.
25 We should have gone down to the seventh layer. We had to go

1 outside of the holdings of our client to find this
2 information. We apologize. We agree that there is no
3 diversity jurisdiction.

4 I don't think 1332 is necessarily meant to bound to
5 diversity claim based on point-three percent ownership, but
6 it does. There is no de minimis exception. We agree with
7 Your Honor. We take responsibility for that. We agree there
8 is no diversity, and we apologize that we didn't catch that
9 sooner, and we thank the court for bring that to our
10 attention.

11 But we do have federal ancillary jurisdiction. We've
12 prepared a three-page bench memo last night, and we've given
13 it to defendants, which we believe articulates the relevant
14 legal standard and how far you can go in this case.

15 THE COURT: Are you going to share it with me?

16 MR. WILLIAN: I would love to, Your Honor.

17 THE COURT: Well, usually when you prepare something,
18 you file it electronically, and we look at it. Have you done
19 that?

20 MR. WILLIAN: No, sir, we have not. We just finished
21 it this morning, and didn't know whether you'd accept it, and
22 we wanted to, at least, ask your permission before we brought
23 it to your attention.

24 THE COURT: Hand it up.

25 Let me ask you this, counsel: Do you need a separate

1 lawsuit in order to attack the trust in the sense of asking,
2 in an ancillary proceeding, to enforce your judgment against
3 the beneficiaries of the trust and the other defendants? In
4 other words, couldn't you do that without filing a separate
5 lawsuit?

6 MR. WILLIAN: I don't believe so under these
7 circumstances. As this bench memo makes clear, citing the
8 *Peacock* case, quote, You have the jurisdiction to -- you can
9 exercise jurisdiction over a broad range of supplementary
10 proceedings involving third parties to assist in the
11 protection and enforcement of federal judgment. So it refers
12 to involving third parties, including attachment, mandamus,
13 garnishment, and the prejudgment avoidance of fraudulent
14 conveyance. That's *Peacock* at 356.

15 And that's precisely what Count 1 and Count 2 of the
16 complaint seek to do. Count 2 is for fraudulent conveyance.
17 Count 1 is a declaratory judgment that we have the right to
18 attach and to garnish certain assets.

19 THE COURT: So let's just look at your complaint.

20 You would agree that if there is no diversity
21 jurisdiction, some of the defendants that you have sued must
22 be dismissed? Do you agree with that?

23 MR. WILLIAN: We agree that Cicilia Elali should be
24 dismissed, and that's the only actual defendant that should
25 be dismissed.

1 THE COURT: Well, you've sued Mr. Dean individually.
2 He was not -- he is not a judgment debtor.

3 MR. WILLIAN: That's correct, Your Honor, but he is a
4 third party who holds assets of the judgment debtor that
5 we're entitled to attach.

6 THE COURT: Well, but you can sue him as a trustee,
7 perhaps, but you can't sue him individually, can you?

8 MR. WILLIAN: Yes, sir. We believe that we can sue
9 third parties individually who have assets of the judgment
10 debtor, and that's, basically, the authority that I just read
11 to you from *Peacock*, which says, again, that you can exercise
12 jurisdiction of a broad range of supplementary proceedings
13 involving third parties to assist in the protection and
14 enforcement of federal judgments, including attachments,
15 mandamus, garnishment, and the prejudgment of avoidance of
16 fraudulent conveyances. And that's precisely what Count 2
17 covers, that's precisely what Count 3 covers of our
18 complaint.

19 THE COURT: What about BGH Holdings, LLC? Do you
20 have a judgment against them?

21 MR. WILLIAN: No, sir, we don't, but they have -- as
22 Ms. Tsoumas will show you and demonstrate, and as the
23 evidence demonstrates, they have assets of the judgment
24 debtors, and, therefore, we have a right to attach that.

25 THE COURT: All right. Go ahead.

1 MR. WILLIAN: So we agree that the fraud count, which
2 is Count 4, and the conspiracy count, Count 5 of the
3 complaint, should be dismissed. We don't intend to proceed
4 on those actions -- causes of actions in front of you as a
5 result of the lack of diversity jurisdiction.

6 But, plainly, Count 1, which seeks declaratory judgment,
7 that we can attach various assets of the judgment debtors and
8 of certain third parties, should proceed, and certainly
9 Count 2 should proceed, which strictly sounds of fraudulent
10 transfers.

11 And that *Peacock* quote I gave you, the court clearly
12 recognizes that you have the right to -- based on your
13 jurisdiction, to hear fraudulent transfer claims to enforce a
14 judgment.

15 THE COURT: How about your third claim dealing with
16 alter ego and corporate veil piercing?

17 MR. WILLIAN: That one is a little bit more muddy, I
18 should say. We don't think it's necessary to dismiss it at
19 the moment. But, importantly, Your Honor, for purposes of
20 this hearing, the motion only is a motion to enforce -- or
21 for a preliminary injunction regarding Counts 1 and 2.

22 THE COURT: Well, wait a minute. This hearing
23 involves two motions; one is a motion to dismiss the entire
24 complaint.

25 MR. WILLIAN: Understood.

1 THE COURT: So alter ego -- Claim 3 is on the table.
2 What is your position?

3 MR. WILLIAN: Our position is that Count 3 should
4 stay for now; that there's authority that suggests that, for
5 example, if a third party, like -- let me just give you an
6 example -- CCRB Enterprises, that's a defendant, and as we've
7 demonstrated and will demonstrate today, that is the alter
8 ego of a judgment debtor. It was even set up for,
9 essentially, fraudulent purposes, to receive fraudulent
10 transfers. Therefore, based -- an alter-ego theory, that
11 that is a fictitious third party, and we're allowed to attach
12 the assets of that company on that basis.

13 Also, obviously --

14 THE COURT: Just a moment. Just a moment, counsel.

15 Sorry. I missed a couple of words, and I was hoping to
16 pick it up on the realtime, but it's not working.

17 MR. WILLIAN: I was giving you an example of how veil
18 piercing is within your jurisdiction. I was trying give you
19 an example of a defendant, CCRB Enterprises, LLC. We'll
20 demonstrate that that was set up for fictitious purposes,
21 basically hiding the assets of the judgment debtor, and,
22 therefore -- we have several theories to allow you to attach
23 the assets of that company, but they would include veil
24 piercing. We say we're allowed to attach it. They say, no,
25 it is a legitimate company as a defense. Our response is, it

1 is not legitimate. It is the alter ego of the judgment
2 debtor.

3 So it is not a new theory of liability. Rather, it is
4 piercing a defense that they have raised; that it's a
5 legitimate company that is a non-judgment debtor.

6 So as the bench memo demonstrates, Your Honor, and I can
7 walk you through it in even more detail. But we go through
8 each paragraph of our first cause of action, which is a
9 declaration of why we can attach certain assets. We tie it
10 directly to the case law.

11 THE COURT: What are you referring to now?

12 MR. WILLIAN: To the bench memo that I've given you.

13 THE COURT: This pleading you've just filed?

14 MR. WILLIAN: Yes, sir.

15 THE COURT: When did you give it to the defense?

16 MR. WILLIAN: As soon as I walked in the door, Your
17 Honor.

18 THE COURT: This morning?

19 MR. WILLIAN: Yes, sir.

20 THE COURT: When was it ready to be given to them?

21 MR. WILLIAN: As soon as I got it this morning from
22 my team, I read it, put it in my bag, and walked over here,
23 Your Honor. They worked on it last night, Your Honor.

24 THE COURT: All right. Go ahead.

25 MR. WILLIAN: So as the case law indicates, the

1 second cause of action is for fraudulent transfer. We're
2 going to demonstrate to you that the vast majority of what
3 we're asking you to attach today, or freeze, rather, is a
4 fraudulent transfer.

5 The case law is very clear from *Peacock* that you have the
6 right to hear, and, actually, have the unflagging obligation,
7 since you're jurisdiction, to hear fraudulent transfer claims
8 to enforce a federal judgment.

9 With respect to the first cause of action, we break it
10 down, and we seek a declaration that the plaintiff is
11 entitled to seize the assets in the Sharon Graham Bingham
12 2007 Trust, for which Sharon Bingham is a beneficiary.
13 That's Complaint Paragraphs 95A through C. And it's our
14 belief the trust is holding millions of dollars of the
15 debtors' assets, which would be attachable but for their
16 claim that the trust has spendthrift protection. That's
17 their defense.

18 We believe that the trust is not entitled to that
19 spendthrift protection; that that is not a real defense; that
20 you should hear the evidence and rule it's not entitled to
21 spendthrift protection. That's squarely within your
22 authority. That's Complaint Paragraphs 95A through C, the
23 first cause of action.

24 In addition --

25 THE COURT: I think I understand your position. Let

1 me from hear the defense on the diversity and jurisdictional
2 matters.

3 MR. McGLOTHIN: Good morning, Your Honor. Dennis
4 McGlothlin from the Western Washington Law Group, and I
5 represent Henry Dean individually, Cicilia Park individually,
6 and BGH Holdings.

7 As stated in Mr. Dean's declaration, he is a member of the
8 Washington State Bar Association for the past 50 years, a
9 captain in the Marine Corps, and a veteran of the United
10 States Armed Forces.

11 It is a shame that these kind of complaints get filed
12 without a subject matter jurisdictional analysis by the
13 plaintiff alleging the acts of Mr. Dean.

14 Besides that, I believe that the ancillary jurisdiction
15 argument has some problems.

16 First of all, I'd like to say that the argument that
17 Mr. Willian just made regarding piercing the corporate veil
18 as an alter ego are either -- they're disingenuous, and it's
19 either from him not reading the cases he cites, or
20 misrepresenting them to you.

21 On page 106 of the opinion you just handed down for me to
22 read, which is on page 5 of your handout, the first full
23 paragraph talks about the Supreme Court *Peacock*. It says,
24 "Since *Peacock*, most courts have continued to draw
25 distinction between postjudgment proceedings to collect an

1 existing judgment, and proceedings, such as claims of alter
2 ego liability and veil piercing that raise an independent
3 controversy with a new party in an effort to shift
4 liability."

5 So, clearly, the corporate veil piercing, alter ego,
6 disregarding corporate entity claims are not cognizable
7 without diversity jurisdiction.

8 We have this case out of the Ninth Circuit that the Second
9 Circuit has followed shortly after the *Peacock* decision, and
10 it's called *Thomas, Head*. The *Thomas, Head* is a very, very
11 narrow read upon which ancillary jurisdiction rests. By
12 definition, it has to be a supplemental proceeding.

13 They'd already commenced the supplemental proceeding,
14 which you've presided over for over a year now, seeking
15 subpoenas and documents from the trust. That is their
16 vehicle to bring a third-party claim against only a
17 transferee who has assets that were formerly the judgment
18 debtors' in their current possession. Because what they're
19 asking for is to say that is not your asset, that is the
20 debtor's asset, and then you can void that transfer and bring
21 that back over into the debtors' hands . You cannot seek
22 monetary liability against the judgment debtors. That's
23 where the line is drawn.

24 If you look at the cases on that same page that they
25 cited, not only the *Thomas, Head* case, but they say that you

1 can pursue under the ancillary jurisdiction of the court the
2 assets of the judgment debtor, even though the assets are
3 found in the hands of a third party.

4 Same with the *Security and Exchange Commissioner v. Antar*
5 case. They have to be found in the hands of the relief
6 defendants. And the *Merrill v. Miller* case: "Plaintiff does
7 not allege that he should be able to satisfy his judgments by
8 reaching Ms. Deal's assets or Mr. Loger's assets; rather, he
9 alleges that the assets in question rightfully belong to the
10 judgment debtor."

11 So if the asset is no longer in existence in the
12 subsequent transferee's hands, and you're not seeking a
13 pulling back and give it back to the judgment debtors for
14 execution, then it doesn't fall within the *Thomas, Head*
15 exception.

16 THE COURT: Well, you'll have a chance to brief the
17 issue. Unfortunately, the issue has just recently arisen.

18 But what is your view on whether or not I have ancillary
19 jurisdiction to consider the declaratory judgment claims and
20 the fraudulent conveyance claims?

21 MR. McGLOTHIN: Well, there's nothing in *Peacock* that
22 says declaratory judgment is one of the remedies that's
23 available in a postjudgment proceeding. But to the extent
24 that they overlap with an action to try to recover an asset
25 in somebody's hands and bring it back in, I think that's a

1 distinction without a difference.

2 But I would like to point out, there is one big problem
3 with this case.

4 The *Thomas, Head* --

5 THE COURT: There is just one?

6 MR. McGLOTHIN: No, there is one big jurisdictional
7 problem that hasn't been addressed yet, and that is, this
8 judgment was issued by the Northern District of Illinois, and
9 the Seventh Circuit has a different analysis than the Ninth
10 Circuit and the Second Circuit. They don't allow ancillary
11 jurisdiction for fraudulent conveyance actions.

12 THE COURT: So that raises an interesting issue,
13 doesn't it, as to the ancillary proceeding, is here --

14 MR. McGLOTHIN: Right.

15 THE COURT: -- does Ninth Circuit law control, or
16 Seventh Circuit law?

17 MR. McGLOTHIN: I don't think you can take an action
18 from the Seventh Circuit, bring an ancillary proceeding in a
19 different circuit, and gain rights.

20 As a matter of comity to the Seventh Circuit, I think that
21 would encourage forum shopping and would thwart many policies
22 that the federal case law --

23 THE COURT: Well, what you're suggesting is that they
24 couldn't take their Seventh Circuit judgment and try and
25 enforce it in ancillary proceedings anywhere other than the

1 Seventh Circuit. Or are you suggesting you could do that,
2 but it would be governed by Seventh Circuit law?

3 MR. McGLOTHIN: I think it has to be governed by
4 Seventh Circuit law.

5 THE COURT: And what do you think Seventh Circuit law
6 would say --

7 MR. McGLOTHIN: I'll cite the case for you and your
8 clerk. It's *Galuska*, G-a --

9 THE COURT: Give us the cite. I don't want the name.

10 MR. McGLOTHIN: 172 F.3d 53.

11 THE COURT: And what do you think it says?

12 MR. McGLOTHIN: Well, it says the district court's
13 jurisdiction over the first suit does not carry over to a
14 new, independent suit, even when a new suit is brought to
15 enforce a prior federal judgment.

16 And they're saying there is a bright line when that first
17 suit ends. Ancillary jurisdiction is meant to really -- it
18 follows the *Peacock* analysis; that it's really meant to let
19 defendants bring their claims, if they're hailed into federal
20 court, so that those rights aren't lost. And they say that
21 once jurisdiction ends in their case, then there is no more
22 ancillary jurisdiction at that point. You're either left to
23 your state law remedies, or other collection remedies under
24 the Federal Rules of Civil Procedure. That's just the way
25 the Seventh Circuit has interpreted it.

1 THE COURT: Well, did you brief any of that in
2 connection with your motion to dismiss?

3 MR. McGLOTHIN: I -- I just looked -- I did this in
4 response to what you sent me yesterday, and what they --
5 their second amended --

6 THE COURT: Well --

7 MR. McGLOTHIN: -- they weren't claiming ancillary
8 jurisdiction.

9 THE COURT: They were claiming diversity
10 jurisdiction. How did you answer to that? Did you admit it?

11 MR. McGLOTHIN: I -- I didn't -- we didn't answer
12 yet. We filed a motion to dismiss.

13 THE COURT: Well, I think -- don't you think that
14 this court, either in the first proceeding, which deals with
15 discovery and that aspect of the case, or this case,
16 somewhere doesn't this court have the jurisdiction to
17 consider these issues -- some of these issues?

18 MR. McGLOTHIN: I definitely think the veil piercing,
19 disregarding the corporate entity, and alter ego theories are
20 outside what you can consider, given the *Efferson* case.

21 THE COURT: Well, how about fraudulent conveyances?
22 How about the challenge to the trust, which goes to the heart
23 of the matter. Is this a spendthrift trust that is or is not
24 subject to creditor attack?

25 MR. McGLOTHIN: Well, what you're trying to do is

1 make the spendthrift -- if they were seeking to avoid the
2 transfers that were still in the hands of the spendthrift
3 trust, then if they brought a supplemental proceeding for
4 that, then, perhaps, you can go after that, with that
5 exception I made of the divisions between the two circuits,
6 the circuit of the rendering court of the judgment and this
7 circuit. Subject to that, I think the *Thomas, Head* case
8 allows for a supplemental proceeding to do that.

9 THE COURT: Well, isn't that really what's happening
10 here?

11 MR. McGLOTHIN: This is really an independent action.
12 And if you look --

13 THE COURT: It's certainly an independent action.

14 MR. McGLOTHIN: It's not a supplemental proceeding.

15 THE COURT: Well, in a supplemental proceeding, could
16 Mr. Dean be sued individually, if it's alleged that he has
17 received assets that came out of this trust?

18 MR. McGLOTHIN: Only if they were still in his hands.

19 THE COURT: Well, but, of course, we don't know
20 whether they're still in his hands. But if they're in
21 someone else's hands that he caused to allow them to be
22 sent -- I mean, some of it was alimony payments, apparently,
23 that were made to his former wife. Could they attack that?

24 MR. McGLOTHIN: The way I read *Thomas, Head* and the
25 way I read the cases and this *Efferson* case, the asset still

1 has to be in the hands of the relief defendants or the
2 fraudulent transferee.

3 THE COURT: So if one transferee received the asset,
4 and then the next day sent it to the second transferee,
5 you're telling me that they couldn't chase the second
6 transferee?

7 MR. McGLOTHIN: Oh, they can chase the second
8 transferee.

9 THE COURT: How about the third transferee?

10 MR. McGLOTHIN: They can chase the third transferee.

11 THE COURT: So it doesn't have to be in the hands of
12 the original transferee?

13 MR. McGLOTHIN: But what they can't do is get a
14 monetary judgment against the first transferee. That's what
15 I'm suggesting. That's where you cross the line.

16 THE COURT: I don't understand. Let's assume we're
17 talking about -- let's just pick a number -- \$50,000.
18 Mr. Dean, as trustee, transfers \$50,000 from the trust to his
19 former wife, who then transfers it to my law clerk. He needs
20 an upgrade in his salary. Can they not -- can't the
21 plaintiff go after and get that \$50,000 back from my law
22 clerk?

23 MR. McGLOTHIN: Yes, if -- but what they can't do is
24 get a \$50,000 monetary judgment against Mr. Dean or his
25 ex-wife, who made the transfer, because then you're imposing

1 monetary liability on them as opposed to trying to bring back
2 an asset.

3 And that's a good point, because cash is really hard in
4 these circumstances to clearly trace, specify, and say that
5 that cash is the cash that was fraudulently transferred, et
6 cetera. And all the allegations in their response to their
7 motion to dismiss, the appendix which should have been part
8 of the complaint in the first instance, are all transfers of
9 cash.

10 THE COURT: Well, we have a lot of issues to discuss
11 this morning and a lot of expensive lawyers that have come
12 from out of town to participate. Here's what I'm going to
13 do. I think we should take advantage of the lawyers being
14 here and the issues that you have briefed up.

15 I think it's clear, and I am going to rule, that I don't
16 have diversity jurisdiction, for the reasons that we have
17 discussed and for the reasons set forth in *Efferson v.*
18 *Entertainment Express*, which is the Second Circuit case that
19 we've been talking about, and the *Peacock* case from the
20 Supreme Court, and I'm going to dismiss without prejudice the
21 plaintiff's complaint as it relates in all respects to the
22 one defendant, Cicilia Elali, formerly Cicilia Park.

23 I'm going to dismiss, again without prejudice, Mr. Dean in
24 his individually capacity. I think that the issues need to
25 be reframed.

1 I'm going to dismiss the fourth cause of action for fraud
2 against all defendants, a civil conspiracy complaint against
3 all defendants, for lack of jurisdiction.

4 I'm unclear on the alter-ego issue. I believe it may be
5 something that can be raised in an ancillary proceeding. So
6 I'm -- so what I'm going to do is order the plaintiff to file
7 an amended complaint, within 20 days, that narrows the issues
8 and relies solely on ancillary judgment.

9 If the plaintiff wishes to proceed forward in this case, I
10 think, frankly, what ought to happen is that whatever issues
11 are being litigated, in terms of trying to collect the assets
12 of the trust or others, there ought to be a truly ancillary
13 proceeding in the other case. And I think we can accomplish
14 everything that we need to do in that case, and we could
15 dismiss this case entirely.

16 But because the briefing has -- and jurisdiction has kind
17 of erupted on the court in the last, literally, 24 hours, I'm
18 not prepared to do that yet, but I would encourage the
19 plaintiff to consider the vehicle in which it wishes to
20 proceed in order to try and challenge the issues that would
21 remain.

22 I do believe that the plaintiff, in an ancillary
23 jurisdiction, the court would have authority to consider
24 whether there were -- whether the trust is or is not a valid
25 spendthrift trust, and whether or not there were or were not

1 fraudulent transfers.

2 Of course, there is a huge statute of limitations issue on
3 the merits as a defense, which has been briefed but which
4 cannot be today resolved.

5 And I am quite concerned with many of the allegations
6 contained, frankly, in the existing complaint as it relates
7 to, particularly, the fraudulent -- alleged fraudulent
8 representation of Mr. Dean, given all of the information
9 which Mr. Dean and others provided to the plaintiff and
10 plaintiff representatives years ago.

11 But for the record, the motion to dismiss -- I don't have
12 the docket number, but it's -- that motion will be granted in
13 part and denied in part for the reasons stated on the record.

14 And the plaintiff is directed, within 20 days, to file an
15 amended complaint, should the plaintiff wish to pursue the
16 matter strictly on an ancillary proceeding basis.

17 So I think that brings us, then, to the preliminary
18 injunction motion. I mean, I don't see any -- well, I guess
19 you have got a motion to dismiss the first two claims as
20 well. Do you wish to have argument on that?

21 MR. McGLOTHIN: Yes, Your Honor. At least -- I would
22 argue, at least, as to the Voidable Transactions Act claim.

23 THE COURT: All right. Well, any questions on the
24 court's ruling so far?

25 MR. WILLIAN: No, Your Honor.

1 THE COURT: All right. So with respect to the motion
2 to dismiss, essentially, the Cause of Action 2, I'll hear
3 brief oral argument on that.

4 MR. McGLOTHIN: Your Honor, the Uniform Voidable
5 Transactions Act claim relies primarily, from what I can see,
6 on actual fraud claim basis, even if it is a constructive
7 fraud claim basis, which they say they're pleading in the
8 alternative, it has to meet the heightened pleadings
9 requirement of Federal Rule of Civil Procedure 9, and it just
10 really does not rise to that level.

11 It doesn't identify, at least in the complaint, the
12 transactions that were allegedly fraudulent. It doesn't do
13 it by date and time so that you can make an informed
14 decision.

15 They try to supplement that in their response as an
16 appendix to their response to the motion to dismiss, and it
17 really has to be in the four corners of the complaint. And
18 once they do that, then we could bring a subsequent motion to
19 dismiss as to certain of those actions, and limit discovery,
20 et cetera.

21 So that cause of action needs to be dismissed without
22 prejudice, and have them replead it, putting forth the actual
23 transactions, when they occurred, what the transactions were.
24 Basically, if they're going to rely on that chart, put that
25 in there so we can test the sufficiency of the pleading once

1 it's properly put into a pleading.

2 The other thing they have --

3 THE COURT: They do allege and outline in the
4 complaint a variety of transactions. They actually have
5 charts. I refer you to paragraph 48, just for example, the
6 outlining the 495,000 checks written to CCRB, which is an
7 entity that is owned by, I guess, the grandparent -- the
8 grandchildren and the great-grandchildren of the Bingham.
9 They were Bingham's children and grandchildren, I guess, is
10 what they are.

11 But on page 12 of the complaint, they list each
12 transaction, the date, where it came from, the trust, the
13 amount.

14 Let's take the first one, \$146,000 for a Hunts Point
15 contract fee, and then there are all of these payments
16 regarding the improvements to the swimming pool, apparently,
17 of the family, Chris Bingham's home.

18 What more do you need?

19 MR. McGLOTHIN: If those were the only transfers that
20 they were seeking to void, then I think that would be
21 sufficient, but --

22 THE COURT: Well, but do you agree with me that those
23 transactions -- the pleading is sufficient under the rule?

24 MR. McGLOTHIN: But I think they should do that for
25 all the transactions that they're seeking.

1 THE COURT: All right. Well, then, but the problem
2 is that once you have conceded that some of these allegations
3 are sufficient, then don't I have to deny the motion to
4 dismiss the claim, and you can sort it out in summary
5 judgment fashion?

6 MR. McGLOTHIN: Well, as to cash payments, you know,
7 I -- the other -- I would have no problem as to cash
8 payments, I guess. But --

9 THE COURT: But you're moving to dismiss those in its
10 entirety, and I'm telling you -- I'm asking you, really, if
11 some of the transactions are pled with sufficient detail to
12 pass muster with Rule 9, then don't I have to say the
13 complaint stands, and you can sort it out later?

14 MR. McGLOTHIN: If the plaintiff is limiting itself
15 to those transactions, yes, or they'd have to amend the
16 complaint at some further date to allege further
17 transactions. And that's what I'm trying --

18 THE COURT: Well, let's go to HyTech Power. That's
19 another one of the transactions you don't like. You know,
20 there were a lot of transactions that -- and again I'm
21 referring you to page 15 of the complaint, paragraph 61.

22 They allege that on 6/23 of 2016, \$100,000 was sent from
23 the trust to HyTech Power. Isn't that pretty specific?

24 MR. McGLOTHIN: It is, but what isn't specific is
25 what was the consideration received and what was it for, was

1 it a loan that was repaid, et cetera. There was \$100,000
2 transferred to a company for an investment. I mean, you
3 know, I'm -- I -- I just -- what I'm trying to say is I don't
4 see that transfer, standing alone, without the intent to
5 defraud element being put in there, the who, what, where,
6 when, why and how, you know, as being sufficient, no.

7 THE COURT: All right.

8 MR. McGLOTHIN: And as to the transfers that they
9 allege to CCRB and to others, and some of them are from the
10 trust back to the judgment debtor, how could those possibly
11 be fraudulent if you're taking assets out of the trust and
12 transferring it back to the judgment debtor? That makes it
13 available for execution. How could that possibly be
14 fraudulent?

15 THE COURT: Well --

16 MR. McGLOTHIN: That's what they're alleging.

17 THE COURT: All right. So your position is that they
18 have not alleged sufficient facts.

19 Does the Cause of Action 2, even in an ancillary kind of
20 jurisdiction claim, require the same type of specificity that
21 an independent fraud claim would require?

22 MR. McGLOTHIN: I believe it does. There's case law
23 out of the Ninth Circuit that says that the actual fraudulent
24 transfer claims do require the heightened pleading
25 requirement, and also constructive fraud claims have a

1 constructive -- have the heightened pleading requirement.

2 The other thing that we're trying to make sure we get a
3 dismissal, even a dismissal with prejudice, is that any
4 constructive fraud claim doesn't survive if it was more than
5 four years prior to the filing of the complaint.

6 THE COURT: Isn't that a summary judgment type of --
7 it always is -- where does the -- if they've alleged it and
8 they alleged they didn't know about it, doesn't that get them
9 past the motion to dismiss?

10 MR. McGLOTHIN: Only on the actual fraud claim.
11 That's got the discovery rule. The constructive fraud claim
12 has no discovery rule, and neither does the insider
13 preference claim have a discovery rule, and that's one year
14 after the transfer period.

15 THE COURT: Can you bring in an ancillary proceeding
16 in a constructive fraud claim?

17 MR. McGLOTHIN: I don't believe you can.

18 THE COURT: I guess that's all going to get sorted
19 out, isn't it?

20 All right. I think I understand your position.

21 MR. JOHNSTON: Your Honor, may I address a couple of
22 issues for a moment?

23 THE COURT: Yes, in just a moment.

24 We're going to take a short break to get our electronics
25 working, and then I want to go to the preliminary injunction

1 issue.

2 MR. JOHNSTON: It is my intent to just simply address
3 the question you asked about a moment ago.

4 THE COURT: Okay. We'll be in recess.

5 (Court in recess 10:04 a.m. to 10:20 a.m.)

6 THE COURT: All right. Counsel, you may continue.

7 MR. JOHNSTON: Thank you, Your Honor.

8 I want to start by pointing out, I think there is a lack
9 of analytical precision between the federal cases talking
10 about fraudulent transfers and the Washington Uniform
11 Fraudulent Transfer Act, which is really broader.

12 In all of the federal cases, you will see things like,
13 well, he took \$25 million, and he left. There are no trusts,
14 there are no issues like that.

15 So the first question that comes up is, is a court of
16 general jurisdiction -- with general jurisdiction required to
17 hear the fullness of an action under the Washington act? I
18 submit that it is, and that ancillary jurisdiction and
19 research, and we'd asked for additional briefing, will
20 disclose that difference.

21 But in terms of our motion to dismiss the complaint, Your
22 Honor, we moved on that without respect -- in -- in respect
23 to the second cause of action and, indeed, the first without
24 reference to the jurisdictional issue, and I simply want to
25 address that motion to dismiss.

1 The complaint, although it's 95 paragraphs or something of
2 that nature, is prolix, it's confusing, and it omits
3 essential elements of any cause of action under the
4 Washington act, which would be more strict than what I think
5 the federal statute under ancillary jurisdiction would be.

6 Now, what does it omit? Number one --

7 THE COURT: So what law -- if we have only ancillary
8 jurisdiction, is it going to be federal law or state law?

9 MR. JOHNSTON: Your Honor, I think that the issue of
10 what ancillary jurisdiction covers is exactly what
11 Mr. McGothlin indicated, and that is an actual conveyance of
12 property of the debtor that can be shown to be property of
13 the debtor in the hands of a third party.

14 The constructive claims and those kinds of things
15 regarding trust, by the way, are subject to counterclaims
16 under state law; pursuit of trust assets improperly creates a
17 cause of action. It is a matter that, frankly, just has to
18 be in state court, and should be. And, indeed, that --

19 THE COURT: Well, I wish it was, but it's not --

20 MR. JOHNSTON: Well, Your Honor --

21 THE COURT: And if it is only ancillary jurisdiction
22 that I enforce, I don't think any counterclaims can be
23 brought. If you want to sue the plaintiff, I think that
24 you'll have to go to state court or go to Illinois or go
25 someplace.

1 MR. JOHNSTON: Well, the problem is, Your Honor, I
2 think that we need to look very carefully at the boundaries
3 of the court's ancillary jurisdiction, unless we go down the
4 same kind of a path that you described in the other case.

5 And I want to say that, in terms of their pleading, even
6 if there were jurisdiction, Your Honor, number one, the
7 Fraudulent Transfer Act defines specifically a transfer, and
8 it says it must be a transfer from a debtor to a third
9 person.

10 All of the matters that you discussed relating to HyTech,
11 relating to the swimming pool, relating to all those things,
12 have nothing to do and cannot constitute a fraudulent
13 conveyance.

14 Unless they can show -- and they've admitted this trust
15 was valid in its inception, there were \$10 million put into
16 it, as indicated in Mr. Dean's declaration, and they didn't
17 acknowledge to the court that it was valid at its inception.

18 So they have to show that there was a transfer into the
19 trust that was in violation of a provision -- and the best
20 case -- a violation of some provision of the Fraudulent
21 Conveyance Act.

22 And, Your Honor, you have to take the facts of the
23 pleadings in the complaint as true if they are well pled and
24 if they are complete. In this case, they are neither well
25 pled nor complete.

1 I defy them to find one specific transfer of money or of
2 value into the trust by a debtor within four years of the
3 complaint.

4 Now, Your Honor mentioned the statute of limitations.
5 It's very interesting. The statute of limitations can be the
6 subject of a motion to dismiss if adequate information is not
7 pled.

8 And it is very interesting. I did a little research on
9 what Kirkland & Ellis, the particular lawyers in this
10 courtroom, have said about the discovery rule. In a pleading
11 in a case where they were representing Boeing, Ms. Tsoumas
12 and Mr. Faria said, "Indeed, a plaintiff who doesn't allege
13 that she was injured within the statute of limitations period
14 but instead invokes the discovery rule concedes, by
15 implication, that without the discovery rule, the claims are
16 barred."

17 Now, there are no claims of transfers into the trust
18 identified according to Rule 9 in this complaint within four
19 years of the filing of the complaint. They go to the
20 discovery rule by throwing all of this nonsense at Mr. Dean
21 and say, well, he lied and we were mistaken.

22 Well, Your Honor, there is a necessary element to that,
23 and that is they had to rely and they had to reasonably rely
24 on it, and they have to plead that.

25 Now, a corporation or an LLC --

1 THE COURT: They did plead it.

2 MR. JOHNSTON: No, they didn't.

3 THE COURT: They pled reasonable reliance, did they
4 not?

5 MR. JOHNSTON: They stated a conclusion that there
6 was reasonable reliance, but that is not the pleading of a
7 fact, and it is not adequate.

8 And they to say a corporation can only -- and an LLC --
9 can only act through its officers. And the only officers
10 that were available or possible to have relied and to have
11 reasonably relied, and I can -- you can -- in a motion to
12 dismiss, you can look at the attachments to the complaint,
13 and they put in Mr. Weiss's emails and they put in that kind
14 of information -- I don't have to go to Mr. Dean's
15 declaration on the details of that to know that it was Weiss
16 and that Weiss was a lawyer and that Weiss was an
17 inexperienced lawyer. There's no question about that.

18 Now, the only person or persons that could rely would be
19 Weiss or someone that Weiss talked to, because that's where
20 the information or saw the information.

21 So they need to plead who it was within LVB who relied and
22 how possibly it could have been reasonable under the
23 circumstances, and they do not plead any of those facts, not
24 one of them. And, as a consequence, the claim is defective
25 in that they have conceded that their claims, at least those

1 beyond four years, and there are no transfers by the debtors
2 in to them pled with any specificity before that, they have
3 to plead something within that time or outside that time, and
4 if they plead outside the time, they've admitted that they
5 have to have had that reliance they needed to plead the
6 facts; that an experienced lawyer, having been told and been
7 given settlement agreements, documents which indicate there
8 was a challenge to the trust by Umpqua Bank, knowledge that
9 there were four experienced lawyers, the hyper-diligent Dan
10 Brown that all of us know here in Washington, Rick Schroeder
11 at Davis Wright gets a judgment and goes after it, Washington
12 Trust Bank goes after it. They knew those things, and so --

13 THE COURT: I think your arguments mostly relate to
14 the fraud claim and other claims that the court has dismissed
15 as opposed to the fraudulent conveyance.

16 MR. JOHNSTON: I'm only addressing the fraudulent
17 conveyance in that -- in that all of the transfers took place
18 more than four years, any transfer that they've identified in
19 any detail. Of course, all of those are all explainable for
20 reasons that would go to summary judgment.

21 But that's all they've alleged with any specificity. And
22 what it means is, for those to be compensable or even
23 actionable under the fraudulent conveyances of the statute,
24 they have to have pled why the statute of limitations doesn't
25 apply, and they did not do so and they cannot do so, Your

1 Honor, because, under the circumstances, they would have had
2 to supply a statement that Mr. Weiss, an inexperienced
3 lawyer, was misled by this, and they can't do it.

4 THE COURT: All right. I think I understand your
5 position.

6 MR. JOHNSTON: So, again, I just think if there is an
7 allowed amendment, Your Honor, it should be to that claim and
8 its deficiencies as well.

9 Thank you, Your Honor.

10 THE COURT: Thank you.

11 All right. Let's hear from --

12 MR. HENRIE: Your Honor, I just want to say
13 quickly --

14 THE COURT: All right. I don't know who you are,
15 so --

16 MR. HENRIE: Scott Henrie from Williams Kastner. I
17 represent Mr. Dean as trustee. I represent HyTech and Park
18 Place. You earlier asked questions about HyTech, and I
19 didn't get to answer them, but I don't need to today.

20 In light of your ruling, I think that the motion to
21 dismiss probably should be made when we do have an actual
22 complaint.

23 So, Your Honor, I just want to make sure I haven't waived
24 anything by not getting up and saying we'll deal with it when
25 they actually file it.

1 THE COURT: All right. Thank you.

2 All right. Let's hear from the plaintiff.

3 MS. TSOUMAS: Good morning, Your Honor. Tammy
4 Tsoumas on behalf of the plaintiff. I just want to briefly
5 address -- and I'm happy to address any other questions the
6 court has with respect to the defendants' motion to dismiss,
7 but I'll address the arguments that were raised in order, and
8 if Your Honor has further questions, let me know.

9 Mr. McGothlin first raised the argument that plaintiff
10 somehow doesn't identify the transfers in the complaint.

11 I think Your Honor pointed to the right paragraphs in the
12 complaint, but for the avoidance of doubt, we clearly
13 identified the when, the what and the from and the to. And
14 so, for example --

15 THE COURT: Well, what have you alleged in the last
16 four years?

17 MS. TSOUMAS: So, Your Honor, at Document
18 Docket No. 59, starting on page 41 --

19 THE COURT: I'm sorry. What is 59?

20 MS. TSOUMAS: In our opposition to the motions to
21 dismiss, we attached a chart. So this is Docket No. 59. I
22 have an additional copy, if Your Honor would like it.

23 THE COURT: I have it someplace. This is in
24 connection with your motion to dismiss?

25 MS. TSOUMAS: Our opposition, Your Honor.

1 THE COURT: All right.

2 All right. I have it.

3 MS. TSOUMAS: In this chart, Your Honor --

4 THE COURT: What page are we looking at?

5 MS. TSOUMAS: Forty-one.

6 THE COURT: I'm sorry. Paragraph 41?

7 MS. TSOUMAS: No. It's attached to our opposition
8 brief. Would you like another copy?

9 THE COURT: I just need one with the exhibits.

10 All right. The appendix, is that what we're looking at?

11 MS. TSOUMAS: Yes, Your Honor.

12 THE COURT: All right. I have it. Go ahead.

13 MS. TSOUMAS: Within this appendix, Appendix A, we
14 allege 54 different transfers.

15 We've heard the defendants make quite a bit about the
16 statute of limitations. Your Honor, only 13 of the 54 listed
17 on here are beyond the statute of limitations for which LVB
18 would have to invoke the discovery rule.

19 Here, as defendants raised in their motion to dismiss,
20 they've alleged that we didn't allege with specificity. So
21 for the avoidance of doubt, we attached this chart that
22 alleges date, from, to, the subject of the transfer, and then
23 we cite to our complaint. And as Your Honor pointed out to
24 Mr. McGothlin, we include within our complaint several charts
25 detailing by date and amount and from and to.

1 So, Your Honor, if you have any more questions with
2 respect to that, I'm happy to answer them, but I think we
3 have sufficiently identified the transfers at issue.

4 THE COURT: All right.

5 MS. TSOUMAS: Mr. McGothlin also raises that many of
6 these transfers were transfers to judgment debtors. Let's be
7 clear about what Mr. McGothlin is talking about. I'm happy
8 to get into this in further detail.

9 But there are several transfers that eventually end up
10 with the debtors. For example, several hundreds of thousands
11 including a \$1.2 million so-called loan was transferred from
12 the trust to CCRB, then to Chris Bingham. And so when
13 they're talking about transfers to debtors, they're talking
14 about largely transfers to debtors through these shell
15 corporations to, in our opinion, create the appearance of
16 legitimacy. So these aren't transfers going directly to the
17 debtor such that LVB could garnish them. They're going to
18 these holding companies that, without discovery, we weren't
19 able to determine were actually fake.

20 I'd like to turn to the other arguments that were made.

21 We've heard much about this transfer from a debtor
22 argument. Your Honor, as you mentioned at the beginning of
23 this hearing, if money goes to Mr. Dean and then Mr. Dean
24 gives it to his former ex-wife [sic] and his former ex-wife
25 gives it to somebody else, that's a transfer of money from a

1 debtor.

2 Their argument is elevating form over substance, and the
3 Uniform Fraudulent Transfer Act does not allow that. We
4 cited cases to Your Honor, including a case called *Aqua Chem*,
5 which specifically says that fraudulent transfer doctrine is
6 a flexible principle that looks to substance rather than form
7 and protects creditors from any transactions the debtor
8 engages in that have the effect of impairing their rights.

9 And what the defendants have stood here and said is that
10 because money was hidden in this trust and then transferred
11 from the trust, somehow that's not a transfer from the
12 debtor. That is elevating form over substance and is
13 completely inconsistent with the Uniform Fraudulent Transfer
14 Act.

15 Your Honor, we've also heard quite a bit about the statute
16 of limitations. As I indicated to you earlier, that's 13 --

17 THE COURT: You made that point, counsel.

18 MS. TSOUMAS: And as Your Honor mentioned, we do
19 allege that we reasonably relied on misleading statements.

20 So I'm happy to address any other questions.

21 THE COURT: No, thank you. I think I've heard enough
22 on fraudulent transfers.

23 MR. JOHNSTON: Your Honor, may I make one 30-second
24 comment on the document that was discussed?

25 THE COURT: Thirty seconds. We'll count them.

1 Madame Clerk, start your watch.

2 MR. JOHNSTON: Appendix A that was just looked at,
3 as -- it's on -- Document 59. If you look at it, there are
4 only two transfers identified in that document that are from
5 a debtor to the trust or to any third party. All the others
6 go the other way. They were not within the Act.

7 And the one -- the first one is at the bottom of page 1, a
8 note from Francis Graham, and the complaint identifies that
9 that amount of money was spent on her house and she gave the
10 note, so there is no possibility that can be a claim.

11 The second one is on February 28th of 2014, a quitclaim
12 deed in a Sammamish house. The Sammamish house, the public
13 records disclosed, is subject to \$50- or \$60 million worth of
14 liabilities ahead of LVB. It could not have been a
15 fraudulent transfer. There is nothing in here that
16 establishes any transfer within that time frame from a debtor
17 to the trust. It is absent.

18 Thank you.

19 THE COURT: All right. Thank you. I want to get to
20 the motion for preliminary injunction.

21 With respect to the Uniform Fraudulent Transfer Act, the
22 defendants argue that there has been a failure to state a
23 claim under Rule 12(b)(6). I'm satisfied that a claim has
24 been stated.

25 The Uniform Fraudulent Transfer Act holds that fraudulent

1 transfers may be set aside if they're made with action or
2 attempt to hinder or delay.

3 The *Aqua Chemical, Inc.* case that was decided by Judge
4 Robart recently, in 2014, and a transfer is every mode of
5 transferring or disposing of an asset or interest. And an
6 asset is, very broad, property of a debtor; property is
7 anything that may be subject to ownership.

8 In light of these expansive definitions, I think the
9 plaintiff has alleged sufficient facts to support the claim.

10 I also believe the complaint as to that claim meets the
11 applicable pleading standards of both Rule 8 and also the
12 Rule 9, which is the fraud claim statute. It must state,
13 with particularity, the circumstances involving the fraud,
14 the intent and the like, and averments of fraud must be
15 accompanied by the who, what, when, where, and how, and the
16 plaintiffs have clearly indicated that.

17 This standard does apply to the fraudulent transfer
18 claims. That was the ruling in *Aqua Chemical* and other
19 cases.

20 I'm satisfied that this claim does sufficiently allege
21 particularity.

22 They allege in the complaint who perpetrated the alleged
23 fraud, the complaint, at paragraphs 4 through 10 and 29
24 through 72, 99 through 105, when it occurred. I'm not going
25 to list all of these paragraphs. But it is where it

1 occurred, how it occurred, and I'm satisfied, to the extent
2 we have jurisdiction to consider the issue in an ancillary
3 way, that there is enough here to move on to the next type of
4 challenge to this claim. This will be, presumably,
5 ultimately a summary judgment motion, where we'll have to
6 deal with the statute of limitations and the other issues.
7 But I think the claim is there.

8 So to the extent the motion is made to dismiss Count 2,
9 other than what I have indicated is going to be dismissed for
10 jurisdictional purposes, I believe I have ancillary
11 jurisdiction to consider it.

12 And I will still require that the plaintiff file an
13 amended complaint, and, hopefully, narrow the issues, or file
14 something -- and, perhaps, we can just consolidate this case
15 with the other proceedings. We have one ancillary
16 proceeding. But we need to look at that.

17 So I think we're ready to talk about the motion for
18 preliminary injunction, and that's brought by the plaintiffs,
19 so I'll hear from the plaintiff first.

20 MS. TSOUHAS: Your Honor, we've prepared --

21 THE COURT: You got all the heavy lifting, did you,
22 today?

23 MS. TSOUHAS: Apparently, they gave it all to me.

24 THE COURT: All right.

25 MS. TSOUHAS: Your Honor, we prepared a presentation

1 of the evidence that's already in the record, and with your
2 permission, we'd like to display it.

3 THE COURT: Has it been provided to the other side?

4 MS. TSOUMAS: We do have copies. It is just a
5 summary of the evidence that's already been provided, but
6 we're happy to provide copies right now as well.

7 THE COURT: Okay. Please do that.

8 MS. TSOUMAS: Can you see your screen?

9 MR. JOHNSTON: I'd like to see the hard copy.

10 MR. BORDE: Your Honor, for the record, we were not
11 provided a copy in advance of this presentation.

12 MS. TSOUMAS: Your Honor, LVB, as you know, has a
13 valid and enforceable judgment against the defendants for
14 over \$70 million, but for years the defendants have
15 orchestrated a complex, fraudulent scheme to try to avoid
16 payment, all the while living a lavish, extravagant
17 lifestyle, which includes multimillion-dollar renovations of
18 their homes, and trips.

19 Very briefly, Your Honor, if you'll allow me to, I'd like
20 to explain this complex, fraudulent scheme, but, of course,
21 at any point you want to stop me, if you have any questions,
22 please feel free to do that.

23 Your Honor, this all began in 2009, when Chris Bingham
24 called Mr. Dean, who was currently living in Idaho, and told
25 him that the Bingham were having some problems, and they

1 needed Mr. Dean to come and help them come up with some
2 solutions.

3 Mr. Dean, as you know, came to Washington and took on that
4 job. One of his first responsibilities or duties of what he
5 did when he came to help the Bingham in September of 2009,
6 he removed Sharon Bingham as the trustee of her own trust.
7 She'd been a trustee --

8 THE COURT: Let's get the facts straight, counsel.
9 Ms. Bingham signed a document that -- resigned as trustee and
10 appointed Mr. Dean. Isn't that what happened?

11 MS. TSOUHAS: That's correct.

12 THE COURT: So do you concede -- does the plaintiff
13 concede that this was a spendthrift trust and that assets --
14 legitimate assets were put into the trust as of that time?

15 MS. TSOUHAS: We concede that it was intended to be a
16 legitimate spendthrift trust at its inception.

17 THE COURT: That wasn't my question.

18 Do you concede that it was a legitimate spendthrift trust
19 at the time Mr. Dean took over as trustee?

20 MS. TSOUHAS: We concede that when a person like
21 Francis sets up a trust for her daughter -- for the benefit
22 of her daughter, that can be a legitimate spendthrift trust.
23 The only reason I hesitate with Your Honor is there is a
24 portion of a spendthrift trust agreement that, arguably, at
25 inception, makes it not a spendthrift trust.

1 THE COURT: Well, you haven't made that argument in
2 your briefing. I've looked for it, but I haven't seen it.

3 I mean, when it was originally set up -- I'm going to use
4 Sharon Bingham as the beneficiary, but she was also the
5 trustee. I'm not sure you can have a legitimate spendthrift
6 trust when the beneficiary is also the trustee.

7 But you have, essentially, in your pleadings, I think,
8 conceded that it was a legitimate trust, spendthrift trust,
9 and Mr. Dean then became the trustee, and to whatever extent
10 there were defects in the spendthrift trust, wasn't it cured
11 so that when Mr. Dean became trustee, we've got a legitimate
12 spendthrift trust with assets that came from Sharon Bingham's
13 mother; is that where we are?

14 MS. TSOUMAS: It was not our intention to concede
15 that point, but I recognize Your Honor's points on that.

16 THE COURT: You've pretty much conceded it in the
17 pleadings, have you not, and in the briefs you filed?

18 MS. TSOUMAS: We certainly agree that we have focused
19 our attention to different arguments about the trust losing
20 its spendthrift character.

21 THE COURT: Let's assume it was -- going forward now,
22 we're going to assume it was a legitimate spendthrift trust
23 at that moment when Mr. Dean became trustee.

24 Now, what happened to make it not so?

25 MS. TSOUMAS: So when Mr. Dean became the trustee per

1 the document that Your Honor just referenced, he's testified
2 about why he did that.

3 Mr. Dean has specifically testified that one of the
4 reasons for becoming the trustee of the Sharon Graham Bingham
5 trust was, and I quote, "I didn't want Shari or David being
6 the trustee of any trust because of any creditor attempting
7 to attack that trust."

8 One of his purposes was to hinder, delay, and defraud
9 creditors.

10 So it doesn't stop there, of course. That's just the
11 beginning. What does Mr. Dean do next? This was in
12 September of 2010 that Sharon released her responsibilities
13 as the trustee. In November of 2010, Mr. Dean writes an
14 email where he specifically advises Mr. Bingham to keep any
15 investment and profit offshore, away from creditors. That's
16 Mr. Dean's -- one of his second steps as he comes up with
17 solutions for the Bingham.

18 Now, let's turn and talk about the trust and how it loses
19 its spendthrift character. I'd like to first pause, if I
20 can, Your Honor, on how a legitimate spendthrift trust is
21 supposed to work.

22 So as we discussed briefly, Francis, the mother, puts
23 money into the Sharon Graham Bingham 2007 Trust for the
24 benefit of Sharon. As a legitimate spendthrift trust, the
25 way this works is that the income annually goes to Sharon,

1 and the principal, as appropriate. That's how it's supposed
2 to work. Let me show you how it actually worked.

3 So the first leg of this fraudulent transfer scheme is
4 that Mr. Dean had each of the Bingham -- David and Sharon,
5 Chris and Cherish, Kelly and Scott, all debtors -- put,
6 essentially, all of their assets into the trust.

7 So how did this work? Each of these three groups of
8 people entered into a security agreement with the trust
9 whereby they would give a right to all of their property,
10 including Park Place Motors, a luxury car dealership;
11 investments in Bingo Properties and Biolytical Labs; their
12 condos and, essentially, all their real property, in exchange
13 for a promissory note.

14 THE COURT: Well, let's just deal with the Park Place
15 Motors. What was transferred into the trust and what value
16 did it have when it was transferred into the trust?

17 MS. TSOUMAS: So Mr. Bingham transferred all of his
18 shares of Park Place into the trust.

19 THE COURT: And what was it worth when he did?

20 MS. TSOUMAS: That, we don't know, Your Honor. We
21 know that subsequent to that, he's been taking a six-figure
22 salary from Park Place. We know that --

23 THE COURT: Well, no, that's different. The question
24 is, when he transferred that stock in Park Place into the
25 trust, what do you allege was the value of that stock?

1 MS. TSOUMAS: We do not know the precise value, Your
2 Honor. We know that it was a luxury car dealership with
3 several -- many, many luxury cars, and that's how they'd been
4 living, in part, this luxury lifestyle, but we do not --

5 THE COURT: It had debt as well, did it not? It
6 wasn't just a debt-free business. It had debt, did it not?

7 MS. TSOUMAS: Mr. Dean has submitted that it did have
8 debt on it.

9 THE COURT: Well, do you have any facts that would
10 suggest it didn't?

11 MS. TSOUMAS: We do not have anything -- Mr. Dean has
12 not given us evidence that there was no equity in the
13 business. We definitely do not know that as we stand here
14 today. But I cannot answer, with precision, how much it was
15 worth. I can tell you it was a luxury car dealership. And
16 that was just one --

17 THE COURT: When did that transfer occur?

18 MS. TSOUMAS: It occurred in 2012.

19 THE COURT: And when did your client first learn
20 about that transfer?

21 MS. TSOUMAS: Those security agreements -- we learned
22 about the settlement agreement and this sham situation about
23 a year ago.

24 THE COURT: Well, that's not entirely true, is it?
25 Didn't Mr. Dean meet with Mr. Weiss and Mr. Solomon on at

1 least one occasion, both of them, and didn't Mr. Dean and
2 others send a great deal of information to your client, or
3 your client's representatives back in the 2011 and 2014
4 period?

5 MS. TSOUMAS: He did send information, Your Honor,
6 but knowledge of transfers alone is not sufficient to start
7 the running of the statute of limitations.

8 THE COURT: Well, he also sent all the information
9 about the Umpqua litigation and the fact that the litigation
10 had been settled. The trust had paid, I think, about
11 \$3 million, and taken assignment of the judgment; is that
12 right?

13 MS. TSOUMAS: Mr. Dean does submit that he did
14 provide that information to us, that's right.

15 THE COURT: Well, do you deny that your client had
16 that knowledge?

17 MS. TSOUMAS: We do not deny, Your Honor, that
18 Mr. Dean did provide information about litigation.

19 THE COURT: Is that judgment ahead of you, in any
20 event?

21 MS. TSOUMAS: Mr. Dean submits that it is because he
22 purchased it.

23 THE COURT: What do you think? It is a prior
24 judgment, is it not?

25 MS. TSOUMAS: Mr. Dean purchased that judgment, and

1 he did it for a reason. I can tell you what his own words
2 were with respect to that.

3 THE COURT: Let's just deal with the judgment first.

4 MS. TSOUMAS: Okay.

5 THE COURT: Let's assume that they hadn't reached a
6 settlement. That judgment would be sitting out there for \$57
7 million ahead of you, wouldn't it?

8 MS. TSOUMAS: It may have been, Your Honor.

9 THE COURT: All right. And is there anything
10 fraudulent or illegal about a trust settling with a judgment
11 creditor and taking assignment of the judgment?

12 MS. TSOUMAS: So, Your Honor, there -- well, I can
13 tell you why he did it, which --

14 THE COURT: Well, he did it. Clearly, he bought the
15 judgment off at a very favorable settlement, and then got the
16 judgment assigned to the trust. Is there anything fraudulent
17 about that?

18 MS. TSOUMAS: Well, Mr. Dean has specifically stated
19 he did it to thwart efforts of other creditors from going
20 after assets.

21 THE COURT: So what? If he, the trust, pays
22 \$3 million to settle a prior judgment to your client, and
23 takes back that judgment, is there anything illegal or
24 fraudulent about that?

25 MS. TSOUMAS: In our opinion, Your Honor, he did it

1 with the purpose of hindering, delaying, and defrauding.

2 THE COURT: What is your basis for that?

3 MS. TSOUMAS: At Exhibit 68 in the record, so it's
4 Document Docket No. 5, Exhibit 68.

5 THE COURT: What is Exhibit 68?

6 MS. TSOUMAS: It is an email, and Mr. Dean writes an
7 email on July 1st, 2015, and talks about the Umpqua judgment.
8 I'm happy to direct Your Honor to there.

9 THE COURT: Just a moment.

10 All right. I have the email. Go ahead.

11 MS. TSOUMAS: On the last page of the email, Your
12 Honor, so page 3 of that exhibit.

13 THE COURT: All right. Go ahead.

14 MS. TSOUMAS: He writes, "I purchased the Umpqua
15 judgment, which served as a shield, to protect any attempt by
16 a creditor to execute on the family's personal assets."

17 THE COURT: So my question is, it sounds like a smart
18 lawyer purchasing the judgment. What's fraudulent about
19 that?

20 MS. TSOUMAS: Your Honor, there is no reason that he
21 would purchase the judgment to hold a judgment against
22 admittedly insolvent debtors for any other reason besides a
23 fraudulent purpose.

24 THE COURT: Well, excuse me, but didn't -- in that
25 litigation, didn't the bank challenge the spendthrift trust?

1 Didn't they move for a preliminary injunction? Weren't the
2 same kind of issues being raised against the trust?

3 MS. TSOUMAS: They did challenge the spendthrift
4 trust, they did, Your Honor.

5 THE COURT: All right. And the trust, then, made a
6 business decision to settle that claim, did they?

7 MS. TSOUMAS: They made a business decision to settle
8 the claim, but then they took the judgment and, in Mr. Dean's
9 own words, to thwart other creditors, and you wouldn't do
10 that when the debtors were insolvent. It has no rational
11 business purpose other than to hinder, delay, and defraud.

12 THE COURT: And when did your client first learn that
13 the Umpqua judgment had been assigned to the trust?

14 MS. TSOUMAS: Mr. Dean has that in his declaration.

15 THE COURT: Yes, he did. And when did he tell you
16 that he told you that?

17 MS. TSOUMAS: Let's see.

18 He claims that he told us that in paragraph M on page 16
19 to 17 of his declaration, Your Honor.

20 THE COURT: Well, just a moment.

21 Well, he tells you, on page 15 of his declaration, at
22 Subsection K, that Umpqua Bank's assault on the spendthrift
23 trust was going on when he met with Mr. Weiss and Mr. Solomon
24 on February 8th of 2010, and then he described the
25 declaration of Attorney Vanderhoff, who was representing the

1 trust, and a copy of his declaration is Exhibit J, and he
2 states that the position was that the trust creditor, Umpqua
3 Bank, was saying the trust was not valid, and the trustee and
4 his lawyers were saying it was valid.

5 That was way back in 2010, when your clients learned that
6 information; is that right?

7 MS. TSOUHAS: What you just read, yes, but with
8 respect to the assignment to the trust, I believe that in
9 paragraph M, it claims that he told us in April of 2011.

10 THE COURT: All right. So since April of 2011, do
11 you concede that your clients knew that there'd been a
12 settlement agreement? Didn't your clients even get a copy of
13 that settlement agreement?

14 MS. TSOUHAS: I did not receive a copy of that
15 settlement agreement at that time. The first time, I don't
16 believe I saw --

17 THE COURT: I'm not talking about what you saw. I'm
18 talking about Mr. Weiss.

19 MS. TSOUHAS: Yes, that's what Mr. Dean said; that he
20 saw --

21 THE COURT: No, I'm talking about Mr. Weiss. Have
22 you talked to Mr. Weiss about this?

23 MS. TSOUHAS: I have talked to Mr. Weiss repeatedly.

24 THE COURT: Well, what does Mr. Weiss say he got in
25 2011?

1 MS. TSOUMAS: Your Honor, I will take -- for purposes
2 of right now, we'll take Mr. Dean's word for it --

3 THE COURT: Can I assume that the facts stated in
4 Dean's declaration is true?

5 MS. TSOUMAS: That he told us about the judgment
6 being assigned to the trust?

7 THE COURT: And sent Mr. Weiss a copy of it.

8 MS. TSOUMAS: And we will not dispute that for
9 purposes of this.

10 That doesn't take away, Your Honor, from the fact that
11 this transaction that I'm describing is an actual intent to
12 hinder, delay, and defraud. And I'm happy to unpack it
13 further.

14 THE COURT: Well, I'm having trouble with the
15 concept. The trust has got a \$57 million claim against it.
16 If they just let that claim sit there, it would have been \$57
17 million ahead of your client; is that right?

18 MS. TSOUMAS: It may have been, Your Honor, yes.

19 THE COURT: All right. What he's done now is he's
20 settled that claim, and you're saying that because he took an
21 assignment of the unpaid judgment, that that -- and he did it
22 to protect the assets of the trust, that that's fraudulent?

23 MS. TSOUMAS: What we're saying, Your Honor, is that
24 the trust, for various reasons that I'm happy to go through,
25 has lost its spendthrift character because it's not being

1 used as a legitimate spendthrift trust.

2 THE COURT: No, you're mixing apples and oranges now.
3 I want to talk about just what you -- I want to understand
4 your theory of why the assignment of this judgment in
5 connection with the settlement was not a legitimate
6 transaction that they took.

7 MS. TSOUHAS: For two reasons, Your Honor. One,
8 Mr. Dean specifically says, in the exhibit I directed Your
9 Honor to, that he did it to delay, hinder, and defraud
10 creditors; and, two, it is not a rational business decision
11 to take on a judgment against insolvent debtors. On its
12 face, it doesn't look right.

13 THE COURT: I'm having trouble with your logic. He
14 took a \$57-million claim, he settled it for \$3 million and
15 change. What's he going to do, then? Is he just going to
16 say -- discharge your judgment? He can take the judgment,
17 can't he?

18 MS. TSOUHAS: That's what he did, but in his own
19 words, he did it to hinder and delay other creditors.

20 THE COURT: So show me his words again, his actual
21 words.

22 MS. TSOUHAS: It's Exhibit 68, on the third page.

23 THE COURT: Well, the words he uses is, he -- the
24 judgment serves as a shield to protect any attempt by a
25 creditor to execute on the family assets.

1 I'm having trouble with understanding why that was not a
2 perfectly legitimate thing to do.

3 But for purposes of this motion, this motion you're
4 arguing, is one for preliminary injunction. You've got to
5 convince me that the substance of what was going on here with
6 this trust, you just learned about it in this recent
7 discovery, and what I'm suggesting to you is that Mr. Dean's
8 declaration outlines chapter and verse with exhibits of a
9 great deal of information that was provided to your clients
10 way back in 2011 and then again in 2014.

11 So you had this judgment for a long time. Why is it that
12 you're coming in today or this month or last month and asking
13 for a preliminary injunction to freeze the assets?

14 MS. TSOUMAS: I'm happy to go directly to that, Your
15 Honor, and I would just submit that this -- with respect to
16 the Umpqua judgment, it's just one part of an overall scheme
17 that, if Your Honor would allow me to, I'd like to unpack
18 further.

19 THE COURT: You may certainly do so.

20 MS. TSOUMAS: Okay.

21 So as I indicated, all of the Bingham put all of their
22 property into the trust, and then there was a security
23 agreement, and then what happened is, conveniently, all of
24 them defaulted on the loans.

25 THE COURT: So let's stop right there.

1 When did your client learn that the other Bingham's had put
2 their assets into the -- for example, the Park Place Motors?
3 I think that's what it's called. When did you learn that?

4 MS. TSOUMAS: I believe, Your Honor, that -- I know
5 we learned about the settlement agreements. We received
6 those in January of 2017.

7 THE COURT: Well, as I understand the facts, in
8 December 31, 2012, Park Place stock was transferred to
9 satisfy a \$1.9 million debt.

10 MS. TSOUMAS: That is what Mr. Dean called it, yes.

11 THE COURT: And all of the assets were then pledged,
12 the security interest. When did you get copies of those
13 security interests?

14 Mr. Dean tells us that at the end of 2008, Park Place had
15 a substantial negative net worth and negative retained
16 earnings of \$8.9 million. He says he felt that the stock was
17 worthless when it was transferred to the trust. So that's
18 his first claim. The second is that he told you guys about
19 it. When did your representatives learn about this transfer
20 of the Park Place Motors?

21 MS. TSOUMAS: Your Honor, we're looking for that
22 right now. But even if we learned about it in 2011 or 2012,
23 again, it is just one piece of this four-part fraudulent
24 transfer scheme.

25 THE COURT: Well, but I'm trying to unpack the

1 transactions. That's one of the major transactions you're
2 complaining about, is it not?

3 MS. TSOUMAS: It's one of them, Your Honor, yes.

4 THE COURT: All right. Let's fast-forward.

5 You're claiming Mr. Dean then granted -- or the trust gave
6 \$3 million to Park Place Motors so they could -- and he took
7 back a promissory note in security.

8 Could the trust do that? Could a spendthrift trust go out
9 and invest in a business?

10 MS. TSOUMAS: So a legitimate spendthrift trust is
11 permitted to invest in a business.

12 THE COURT: I'm going to ask you to assume that the
13 trust -- this is the only transaction, and you've kind of
14 conceded that it was a legitimate spendthrift trust.

15 Could the trustee go out and invest in Business X -- even
16 though you and I would not wish to put our money there -- and
17 take back the assignment of a promissory note, security
18 interest? The trustee can do that, can it not?

19 MS. TSOUMAS: Yes, the trustee can make reasonable
20 investments. That's not what giving money to Park Place has
21 been in this case, and I'm happy to explain.

22 THE COURT: All right. Please do.

23 MS. TSOUMAS: So as I showed you earlier, a
24 legitimate spendthrift trust is for the benefit of the
25 beneficiary. And the reason we're seeing lots of money go to

1 other places besides Sharon is because once they go to
2 Sharon, they will be immediately garnished.

3 So what they do is divert money to other close family
4 friends, other family businesses in order to divert the
5 money.

6 So with respect to Park Place, for example -- and we'll
7 skip ahead to that -- Park Place, as you know, was given
8 entirely to the trust. And as Your Honor correctly noted, in
9 March of 2017, a \$3 million loan was given to Park Place.
10 That is true. And Mr. Dean did, in fact, call it a loan. We
11 questioned him putting that terminology on it. But what is
12 Park Place? What is the connection between Park Place and
13 the Binghams?

14 Mr. Bingham takes his salary from that company, and he
15 pays his credit cards, including his personal credit card
16 from that company. And let me show you his testimony to that
17 effect.

18 He was asked -- this is David Bingham's testimony -- "Do
19 you have a credit card?"

20 "I have a Park Place credit card. I do have an American
21 Express card.

22 "Who pays that bill?

23 "Park Place.

24 "Who pays your Am Ex card?

25 "Park Place."

1 Your Honor, the money is supposed to go to Sharon. It's
2 being diverted to other companies, Park Place being one of
3 them, to hinder, delay, and defraud. It is a cover for
4 getting money to creditors. This is one part of the scheme.

5 But, Your Honor, I'd like to back up a little bit and look
6 at CCRB, because that is also one part of the scheme.

7 As Your Honor knows, Chris Bingham represented to the
8 State of Washington that CCRB was an investment banking
9 company. I personally deposed Mr. Bingham on December 1st,
10 2017, and he admitted, repeatedly, CCRB has no employees, no
11 meetings, no minutes, and he freely and always uses the
12 accounts from CCRB for his personal expenses.

13 CCRB has been getting \$15,000 a month that Chris has been
14 using personally. That is in addition to the \$1.2 million
15 that was given to him to renovate his home, install an
16 infinity pool, put granite countertops on in his kitchen, and
17 have stainless steel appliances.

18 Your Honor, in a legitimate spendthrift trust, the money
19 is supposed to go to Sharon. The response you'll hear from
20 the defendants is she is allowed to gift money to her child.
21 That is not what's happening here. They can give the money
22 to Sharon, and she can freely choose, like all parents do, to
23 help their kids from time to time. They don't do it that
24 way. They put it through a fake company, and give it to
25 Chris. Why? To hinder, delay, and defraud to the tune of

1 millions of dollars.

2 But it goes further than that. Your Honor referenced
3 loans. This is what they do. Let me show you some of the
4 transfers on the next page.

5 These are, as you know from our complaint, between
6 February of 2016 and June of 2016, over \$450,000 went
7 directly from the trust to CCRB, not to Sharon, to CCRB, for
8 the Hunts Point pool, Chris's infinity pool. So this is all
9 between February and June. What does Mr. Dean do to make
10 this look legitimate? He, thereafter, in November, five
11 months later, puts together a half-page piece of paper that
12 says those advances are a loan and they're going to be paid
13 back. Your Honor, this is just part of the classic scheme
14 that they have been creating for ten years.

15 THE COURT: So let's just stop right there.

16 Clearly, you make a strong argument that that which has
17 been paid to CCRB, that that is a shell company that has no
18 real substance and that these monies are being used. Now,
19 this money has been transferred to that company and then used
20 for these purposes.

21 If I were to grant a preliminary injunction -- let's just
22 take that segment -- what would the preliminary injunction
23 say? That they could not sell the swimming pool and the
24 house?

25 MS. TSOUMAS: Your Honor, so there are a couple of

1 points there. The \$1.2 million is a fraudulent transfer. So
2 that amount of money -- they can't do anything with the
3 amount of money that was given to them if they still have it.
4 Right? But if we go to the remedy slide at end, with respect
5 to CCRB, we're asking Your Honor to freeze the assets of CCRB
6 and enjoin the defendants from transferring any assets or
7 receiving any from CCRB.

8 THE COURT: All right. Let's go back to the trust.
9 You're asking for an order freezing all the trust assets.

10 MS. TSOUHAS: Yes. I'm happy to continue doing that.

11 So if we go back, I'd like to show Your Honor the fourth
12 piece that we're aware of with respect to this fraudulent to
13 this fraudulent transfer scheme, and that is giving money to
14 Mr. Dean personally. These are recent developments, which I
15 will tell Your Honor about now.

16 So we have recently learned, and did not learn until
17 January of 2018 -- and let me back up because that's
18 important.

19 We served a subpoena on the trust in November of 2016.
20 Mr. Dean has purported that every time Mr. Weiss asked, he
21 gave him documents. But we asked for simple things like
22 financial records, bank accounts. We were told no.

23 So as Your Honor knows, we came to you in March of 2017,
24 and in May of 2017, you granted our first motion to compel.
25 We received documents in July of 2017 that were heavily,

1 heavily redacted. We also received not a single email. We
2 went to the Mr. Dean and said we need more. He said no. We
3 came back to Your Honor yet again, and you yet again granted
4 our motion to compel.

5 It wasn't until January 25th of 2018 that, for the first
6 time, we received the financial records that we asked for
7 from the trust back in November of 2016, and the emails.
8 Within those documents we learned that Henry Dean himself has
9 taken over \$300,000 directly from the trust and diverted
10 another over \$60,000 through his own fake company, BGH
11 Holdings, LLC.

12 If we go to the next page.

13 THE COURT: So, again, in terms of the preliminary
14 injunction motion, what would the order say?

15 MS. TSOUMAS: With respect to the trust, Your Honor,
16 if we go --

17 THE COURT: With respect to Mr. Dean. First, he has
18 acted as trustee, clearly, and he's entitled to some
19 payments, is he not?

20 MS. TSOUMAS: That's, actually, why this part of the
21 fraudulent transfer scheme is so concerning to me personally
22 and to our client. Mr. Dean was deposed in a prior
23 proceeding, and he was asked --

24 THE COURT: Not in this litigation?

25 MS. TSOUMAS: He was not, Your Honor.

1 THE COURT: Okay.

2 MS. TSOUMAS: If we could show the testimony.

3 He was asked, "It's not your expectation to be paid
4 anything?" And he said, "Specifically in connection with the
5 trust? No."

6 But he acknowledged there was a, quote, handshake
7 arrangement he had with the Bingham, whereby -- and I
8 quote -- as the family goes, so does Henry Dean. If the
9 family does well because of my work, so will Henry Dean.

10 This is what's concerning to us, Your Honor, because this
11 was several years ago that he testified to this. The only
12 logical conclusion is the family has done pretty well under
13 this fraudulent transfer scheme because Mr. Dean is taking
14 hundreds of thousands of dollars out of the trust.

15 THE COURT: Again, help me understand. The
16 preliminary injunction order would freeze any assets that
17 Mr. Dean has received that he still has from the trust. Is
18 that what you're asking for?

19 MS. TSOUMAS: So with respect to -- if you go to the
20 last slide, please. We're asking for a couple of things,
21 Your Honor. So with respect to the spendthrift trust itself,
22 we're asking for a freeze of it, and I can tell Your Honor
23 more about why we're doing that.

24 So we want to freeze all the trust and enjoin the
25 defendants from transferring any assets that they receive

1 from the trust. So with respect to the \$360,000, at least,
2 that Mr. Dean has received from the trust, we are, in fact,
3 requesting that that be frozen and that he doesn't transfer
4 any of that money to anybody else that he still has.

5 THE COURT: Well, we don't know whether there is
6 anything left, do we?

7 MS. TSOUHAS: And that is the point Your Honor made
8 at the beginning. We don't know that yet. That is why we're
9 here, in fact.

10 THE COURT: So let me back up to where we started
11 this morning.

12 I've dismissed Mr. Dean individually from the complaint
13 without prejudice because of the jurisdictional issue. How
14 does that -- how does my ancillary jurisdiction, which needs
15 to be a little bit fleshed out by additional briefing, play
16 into what I could do with respect to enjoining Mr. Dean or
17 assets he has received? I mean, is that all part of the
18 ancillary jurisdiction, do you think?

19 MS. TSOUHAS: Mr. Dean has a couple of roles in this
20 case. As you know, he is a trustee, and he's also a
21 transferee of money. And so respectfully, Your Honor, as a
22 transferee of money, we believe he should still be in the
23 case as an individual because he's, undisputedly, received
24 \$360,000, and so he should be in the case to that extent,
25 respectfully.

1 But with respect to the trust itself, what we're asking
2 for is a freeze of the trust, and we have a few different
3 reasons for that that I'm happy --

4 THE COURT: Before you get to the reasons, I mean, I
5 looked at your proposed order. It doesn't seem very
6 workable. I mean, I'm not going to be sitting here approving
7 every time Sharon Bingham wants to go to Starbucks and get a
8 cup of coffee, and if she needs money from the trust.

9 So can you propose to me some alternative that would allow
10 normal use of trust funds for the benefit of Sharon Bingham?
11 She's the beneficiary of this trust, is she not?

12 MS. TSOUMAS: I anticipated that question, because
13 when I looked back at it last night, too, I thought you might
14 not want to be playing that role.

15 Your Honor, we're happy to come up with alternatives.
16 Frankly, what we're asking the court to do is to preserve the
17 status quo for us, because we're seeing so much money come
18 out. And if Your Honor would like to substitute that
19 authority to a third person, a special master, somebody,
20 we're happy to come up with alternatives and submit them to
21 the court right away.

22 THE COURT: Okay. Go ahead and continue.

23 MS. TSOUMAS: Okay. So if we can go back to the
24 money going to Mr. Dean.

25 Again, with respect to BGH and Henry Dean, I would submit,

1 Your Honor, that there is only one reason that you would do
2 this. Again, a legitimate trust is supposed to be giving the
3 money directly to the beneficiary. It doesn't work that way
4 because it was being garnished. So giving it to Mr. Dean and
5 Mr. Dean via his holding company is another way to hinder,
6 delay, and defraud. But it keeps going, as you know.

7 There is another leg to this fraudulent transfer scheme,
8 and that is HyTech. HyTech, as Your Honor knows, is a
9 company, and, again, Mr. Dean was the executive of. Mr. Dean
10 has given from the trust over \$360,000 to HyTech. And,
11 again, Your Honor, we did not learn that until our two
12 motions to compel and the documents we received in January of
13 2018. We filed our complaint and the preliminary injunction
14 motion on the 15th of February, just about two and a half
15 weeks after receiving all that information.

16 If we go to the next slide, this is an illustration from
17 our complaint of the money that we're seeing, that we just
18 learned about, going to HyTech. And Mr. Dean wants to tell
19 you that that is a reasonable loan, a reasonable investment.
20 But in recent documents that we just received, emails that we
21 received this year, Cicilia Elali specifically says that
22 HyTech is a long way off from disbursement to shareholders.

23 Your Honor, this is not a legitimate business investment.
24 It is yet another part of the fraudulent transfer scheme to
25 actually hinder, delay, and defraud.

1 But, Your Honor, if we keep going.

2 THE COURT: Why don't we take another short recess,
3 maybe 10 minutes, and then we'll go until 12:15 or 12:30, if
4 we have to, but I do have an afternoon calendar.

5 Have you provided us with a copy of your presentation?

6 MS. TSOUHAS: May I approach and provide you one?

7 THE COURT: You can do it during break.

8 MR. JOHNSTON: Your Honor, I want to make sure we
9 have a balance in time.

10 THE COURT: You wish to be heard, do you?

11 MR. JOHNSTON: I do, actually.

12 THE COURT: Well, we'll give you ample opportunity.

13 MR. JOHNSTON: And I would like the court to have
14 this because I want to go through it, and I think it would be
15 helpful.

16 THE COURT: Certainly.

17 MR. JOHNSTON: Thank you.

18 THE COURT: We'll be in recess.

19 (Court in recess 11:21 to 11:29 a.m.)

20 THE COURT: Well, I've learned from my staff that I
21 do have a lunch commitment out of the office with a judge
22 from a different court, and he's en route, so I'm -- we're
23 going to have end by at least five or ten minutes after
24 12:00.

25 I have a criminal calendar this afternoon, and if we need

1 more time, I can have you come back around 2:30, or another
2 day. So be thinking about calendars and how we'll proceed.

3 All right. Counsel?

4 MS. TSOUHAS: Thank you, Your Honor.

5 So at the end of the day, this is what we know, and this
6 is only what we know thus far of the fraudulent --

7 THE COURT: Are you referring to this?

8 MS. TSOUHAS: I am. I've gone through everything
9 I've learn thus far. I am fairly certain, Your Honor, this
10 isn't it, but, again, a legitimate spendthrift trust is
11 giving money to Sharon, and instead it's being diverted for
12 the actual intent, the actual intent to hinder, delay, and
13 defraud.

14 But let me tell you why we're here today on the
15 preliminary injunction.

16 Your Honor, just in January of 2018, as I told you, we
17 have seen hundreds of thousands of dollars go out of this
18 trust, including to pay Mr. Dean's alimony. And this is in
19 addition to what we've learned from our other discovery thus
20 far: \$15,000 to Chris every month; a \$3 million loan to
21 David's car dealership; \$1.2 million to CCRB.

22 Your Honor, we are sincerely concerned that we'll get to
23 the end of this with a judgment in our favor, and there
24 simply will be nothing left.

25 Your Honor, I'd like to briefly address why --

1 THE COURT: So one of the issues, really, is, if the
2 trust was in its right to settle with other creditors and
3 take an assignment of other judgments, at the end of the day,
4 even if you bust the trust, if you will, the judgments are
5 going to be sitting there, are they not? You're not going to
6 be able to get ahead of those judgments. I mean, at the end
7 of the day, is there going to be anything for you?

8 MS. TSOUHAS: Well, Your Honor, we see that the trust
9 is bleeding hundreds of thousands if not millions of dollars
10 out. So that shows that, despite those judgments, there's
11 still money moving out of this trust.

12 THE COURT: Has your discovery learned what the
13 assets of the trust are as of now?

14 MS. TSOUHAS: The last time we got an accounting of
15 that was in May of 2017 from Mr. Dean, where he represented
16 that the assets were worth about \$13 million. Through this
17 proceeding, he said \$9 million. But that's all we know at
18 the moment, Your Honor. That will be subject to more
19 discovery.

20 So, Your Honor, with respect to our preliminary injunction
21 with respect to the spendthrift trust, we have a few
22 different theories, but one is unassailable.

23 To the extent a spendthrift trust, as I told Your Honor, a
24 legitimate one uses the money for a benefit of the
25 beneficiary. Clearly, that's not happening here. But it is

1 undisputed that when self-settled transfers, transfers of the
2 debtors' or the beneficiaries' own property, go into the
3 trust, those are void against creditors -- those are void as
4 to other creditors under Washington law, which is 19.36.020.

5 The only argument the defendants make that those
6 self-settled transfers do not destroy the spendthrift
7 character of the trust is that at the inception, this was a
8 spendthrift trust, intended to be, and we don't dispute that
9 it was intended to be. And, again, we do not dispute that it
10 was intended to be a legitimate spendthrift trust.

11 However, under the restatement, third of trust, Section
12 58, when there are self-settled assets as well as assets put
13 in by someone like Francis, for example, it destroys the
14 spendthrift nature of the trust, period, end of story.

15 Your Honor can rule on the preliminary injunction on those
16 grounds alone because there is no authority to the contrary
17 that self-settled trusts do not destroy the spendthrift
18 nature of the trust. None. They have cited you no cases
19 that say that. You can rule on that alone.

20 I'll give you one more by basis, and then I'll sit down
21 and cede the floor to the defendants.

22 But the other way you can rule in our favor, Your Honor,
23 is that Sharon Bingham controls the distributions of the
24 trust. First, she was the sole trustee from 2007 until
25 September of 2010. Second, I deposed Mr. Chris Bingham. I

1 asked him, "How does this process work? If you need more
2 than the \$15,000 a month that you get from the trust, what do
3 you do?" And he said, "I go to my mom, and I ask her." I
4 said, "Do you call her?" He said, "Sometimes, or I meet with
5 her."

6 "Would your mother send the money directly to CCRB, or
7 would she send it directly to the vendor?

8 "I think CCRB, primarily."

9 Mrs. Sharon Bingham is directing this trust, and under the
10 authority that we cited for Your Honor, *Britannia Holdings*,
11 for example, that destroys the spendthrift nature, and the
12 preliminary injunction can be granted on that basis alone.

13 Your Honor, we're asking for narrow, temporary, emergency
14 relief so we don't get to the end of this and see that all
15 this money I just showed you, Your Honor, is gone.

16 If Your Honor has any more questions, I'm happy to answer
17 them.

18 THE COURT: If I granted you that relief, what kind
19 of bond would you need?

20 MS. TSOUHAS: Your Honor, it is the defendants'
21 burden to substantiate a bond, and they haven't done that.
22 All we're asking is for the trust to be used as a legitimate
23 trust, which means we freeze it, and that Mrs. Sharon Bingham
24 can come to Your Honor or to a third party, to lessen the
25 burden on Your Honor, under paragraph 4 of our proposed

1 order, and her reasonable expenses can be used from the
2 trust. That's what Washington law allows, and that's what
3 we're asking for. They have not substantiated their burden
4 on that.

5 THE COURT: If I were to appoint a special master,
6 would your client be prepared to pay for that special master?

7 MS. TSOUMAS: I'd have to consult the client on that
8 point, Your Honor, but we're open to alternatives for sure.

9 THE COURT: All right. Thank you.

10 MR. JOHNSTON: May it please the court. Bruce
11 Johnston, and I've identified the parties I represent, Your
12 Honor.

13 Vigilantibus non dormientibus aequitas subvenit: Equity
14 aids the diligent not the indolent. Maximum of equity.

15 The status quo in this case, they said they want to
16 preserve it, the status quo in this is for eight years. The
17 trust has functioned as it has been described, with LVB
18 sitting on their hands, doing nothing, despite the
19 information they got in 2009, 2010, and 2011.

20 I want to go through this presentation.

21 THE COURT: They had information back in 2010 and
22 '11, but what about the recent discovery, and how can you
23 justify any payments to Chris Bingham's corporation and to
24 him and his family?

25 MR. JOHNSTON: Let me start there.

1 Two charts in the material that you had -- let me find the
2 first one I want to talk about, which is at page 7.

3 THE COURT: Page 7 of this handout?

4 MR. JOHNSTON: That's correct.

5 Now, they complain about \$1.2 million for Chris Bingham's
6 pool -- okay? -- but the information that was of public
7 record from 2008 or '9, forward, and it's in Mr. Dean's
8 declaration, establish the following things:

9 Number one, that that house was owned by Francis Graham
10 until just before her death. It was subject to a first
11 mortgage. It was unrenovated for 50 or 60 years. It's a
12 mid-century house on a very valuable piece of property. And
13 as Your Honor pointed out, the first-position security
14 interest, second-position security interest and the like were
15 held by the trust. In other words, any equity above the
16 first mortgage is with the trust.

17 THE COURT: What is the first mortgage? How much
18 is --

19 MR. JOHNSTON: The first mortgage is with Venture
20 Bank. I think Mr. Dean indicates it's about a million-four.
21 I may be off. And it's been there for some time, long
22 before.

23 THE COURT: What is the property worth?

24 MR. JOHNSTON: Your Honor, I'm not sure I'm qualified
25 to say that, but it's certainly worth more than two-and-a

1 half, three-million dollars. But what has been put in the
2 record is that -- LVB put some stuff in the record, and what
3 it shows is this: That prior to the improvements that were
4 made to the house and funded by the trust, in property in
5 which it holds all the equity, their documents, as indicated
6 in one of the exhibits to their motion for a preliminary
7 injunction, is that it was worth two and a half or so, and
8 now it's worth over four. So I submit to you that the trust
9 funding the improvements to take a house, bring it through 60
10 years of non-improvements, and increased its value by an
11 amount more than the debt is a reasonable act as to an asset
12 in which it holds all of the equity if the house were ever
13 sold.

14 THE COURT: Is it followed, then, that a preliminary
15 injunction that would enjoin Chris Bingham and whoever owns
16 this house from taking any action to sell, mortgage, or
17 otherwise encumber it in any way would not have any harm?

18 MR. JOHNSTON: Well, there wouldn't be any harm.

19 THE COURT: We don't need a bond for that, do we,
20 because there's nothing that's being enjoined that isn't
21 already subject to encumbrances.

22 MR. JOHNSTON: But there is also nothing to enjoin
23 because there is no value there. It's subject, according to
24 the title report that we supplied to the court, to \$50- or
25 \$60 million, \$70-, \$80 million worth of judgments. And as a

1 consequence --

2 THE COURT: All right. But let's dig a little
3 deeper.

4 What if I were to enjoin the trust from transferring any
5 trust funds to Chris Bingham or his family or his kids or
6 this corporation? What would your position there be?

7 MR. JOHNSTON: Well, my position would be that would
8 be fully inappropriate. The funds in this trust come from
9 Francis Graham, Christopher's grandmother. He is also a
10 residual beneficiary of this trust, and Mr. Dean has to
11 balance those positions. But that fact is that Mrs. Sharon
12 Graham has one son and has the ability, I think --

13 THE COURT: And he hasn't worked for ten years, he
14 gets 15 grand a month, he gets all this money sent from the
15 trust. Who --

16 MR. JOHNSTON: And if it's the trust funds, Your
17 Honor, it doesn't hurt them because they can't get to them
18 anyway.

19 THE COURT: Well, then, there would be no harm in
20 issuing a preliminary injunction.

21 MR. JOHNSTON: But certainly --

22 THE COURT: I've read and looked at some of these
23 documents in terms of the formation of this entity, CCRB, and
24 I have to tell you, I think it's a fraudulent shell created
25 to avoid creditors.

1 MR. JOHNSTON: No one has --

2 THE COURT: That's what it says.

3 MR. JOHNSTON: No one has ever concealed anything
4 about it. All the creditors have been told about it, anyone
5 who asked about it in depositions and so forth, Your Honor.
6 It's there, but it hasn't hurt anything because any money
7 that went into it came from a trust that a creditor cannot
8 get to. And that's -- and Mrs. Bingham, if she wants to ask
9 to make a gift, trustees -- I mean, I was a trustee for many
10 years on large trusts. We often pay them indirectly or do
11 things. But the trustee has the ability to decide whether or
12 not that is consistent with the testator's or the settler's
13 purposes.

14 The fact that that someone has a nice lifestyle that
15 doesn't come from money that they can't get in the first
16 place is none of their business, frankly.

17 And, Your Honor, I want to go back to -- this is one of
18 many things that they've come up with. They say -- just a
19 second, and let's look at Slide No. 1 on their slides, and go
20 very quickly through them. Let's look at the first one.

21 THE COURT: So are we on --

22 MR. JOHNSTON: On their slides.

23 THE COURT: On their slides?

24 MR. JOHNSTON: Yeah. Take a look at No. 2.

25 THE COURT: Is this plaintiff's?

1 MR. JOHNSTON: There's only one set. I'm just --

2 THE COURT: Okay. Go ahead.

3 MR. JOHNSTON: They have this quote. If you'll
4 notice --

5 THE COURT: Where are you?

6 MR. JOHNSTON: Let's go to No. 2.

7 THE COURT: Page 2?

8 MR. JOHNSTON: Page 2. I'll go through them very
9 quickly.

10 Page 2, they said -- this about Ms. Bingham. You'll
11 notice at the top of that it says, "Graham Bingham
12 Irrevocable Trust." Your Honor might recall a case that was
13 before you involving John Hancock.

14 THE COURT: I do remember that case.

15 MR. JOHNSTON: Okay. That was the Graham Bingham
16 Irrevocable Trust. This has nothing to do with the 2007
17 Trust or anything in this case. It had to do with that case.
18 And it was a life insurance case, and the court will recall
19 that.

20 Now, let's go to Slide No. 3. They say, "Offshore, away
21 from creditors." The only evidence about that was the China
22 boat, which was, A, told by Mr. Spencer Hall to Weiss in
23 2009, by Mr. Dean in 2011, indicating a boat in China brought
24 to Seattle and included in the Centrum settlement, fully
25 disclosed to everybody. There is no evidence of anything

1 offshore.

2 Third, the fourth page, the outline of the trust. Well,
3 yeah, Francis -- and they have acknowledged in front of that
4 court that this was a legitimate trust when it started.

5 So let's go look at No. 5 where they introduce, and they
6 say there were transfers of the Maui condos. As you know,
7 title to those condos was never transferred. We've provided
8 the title --

9 THE COURT: As I understand it, if Mr. Dean's
10 declaration is accurate, the title to those condos have
11 always been in the name of the Binghams.

12 MR. JOHNSTON: That's correct, and they're subject to
13 mortgages, including -- their first mortgage is to a bank,
14 and their second mortgage is to Centrum, which Centrum always
15 had, which exceeded their value.

16 THE COURT: Well, then, presumably, if that's true,
17 the plaintiff could go execute on those mortgages if they
18 felt they would get anything.

19 MR. JOHNSTON: Well, the interesting thing there is,
20 the Umpqua judgment was filed there, the Centrum judgment was
21 filed there, other judgments were filed there. They didn't
22 even bother to file theirs, you know, so there was at least
23 \$100 million in judgments.

24 THE COURT: Held by the trust.

25 MR. JOHNSTON: Held by others as well, Your Honor.

1 One is in those title reports that there are other
2 judgments. There's the Washington Trust judgment, there's a
3 number held by Washington Fed that was originally Horizon and
4 so forth.

5 Now, the same is true of the -- and Your Honor mentioned
6 Park Place Motors. Let me go through why the record in this
7 case establishes there was absolutely no value ever in that.

8 Number one, Mr. Spencer Hall, on November 17, supplied a
9 list indicating a negative net worth of over \$6 million. He
10 then sent the tax returns, and the balance sheet schedules
11 indicated the exact same numbers. They were negative.

12 But what's more important, Your Honor, is, we've attached
13 the complaint and a few other documents, I think they were
14 attached to my declaration, where the East West Bank, which
15 held a first security interest on all of the assets of Park
16 Place and all of the assets of the land on which it was
17 there, and it was about \$17 million owed, if you add it up.
18 This was handled by Judge Jones.

19 That case proceeded. There was an allegation of problems
20 with the trust. The negotiations were with Mr. Beighle at
21 Lane Powell, and what happened was, as Mr. Dean's declaration
22 indicates, there was a reduction of over \$10 million in the
23 settlement. In other words, Your Honor, the liquidation
24 value and the value Mr. Dean was going to pay were very
25 close, one to the other. And the creditor, to get full

1 recovery, elected to take a settlement from the trust, and as
2 a consequence, the entire -- number one, it was clearly
3 worthless and way underwater and could have been foreclosed
4 on by the bank. And Mr. Dean then, through his brilliance,
5 reconstituted it long after -- this was 2014 or '15 or '16 --
6 he reconstituted it. Set up, essentially, an ESOP. The
7 majority of the company is now owned by the employees who are
8 unrelated to any of the Binghams, and it is proceeding as a
9 business, and a profitable one at this point and valuable to
10 the trust, nothing more than but good business operations.

11 And the record discloses all that. A reasonable
12 investigation before filing this injunction motion would have
13 disclosed all of those things.

14 The \$3 million didn't go in until after Mr. Dean had done
15 all those things, until after Park Place was evicted by Sound
16 Transit from its location and needed to go to a new building,
17 and the expenditure of \$3 million was an efficient business
18 decision. And the fact is, the trust owns only a minority,
19 42 and a half percent. Mr. Bingham owns none of it. He is a
20 salaried employee, and Mr. Bochmier, who works in parallel
21 with him, gets the same salary. So, again, they've got their
22 facts all skewed and wrong.

23 Now, as to Mr. Dean, they quote -- well, let me go to the
24 David Bingham credit cards -- the thing they didn't tell you
25 is the rest of the deposition -- what's paid by Park Place on

1 Am Ex is deducted from Mr. Bingham's salary to the extent it
2 is not a legitimate business expense of Park Place.

3 Then what we have is, they complain about Mr. Dean getting
4 \$360,000 for eight years as a trustee. The last time I
5 looked -- and let's go back. You recall that at the time
6 that early deposition was taken in the insurance case,
7 Mr. Dean had gone, and given his age, to a nonactive status,
8 and he had to go through horrible CLEs to get his license
9 back. And then to say that he isn't entitled to compensation
10 of \$45,000 a year for doing this is really -- I just can't
11 imagine that a court, who deals in attorney fees all the time
12 and fees to people of that kind, that that's an unreasonable
13 distribution. To attach it to something nefarious, like,
14 okay, there has to be a payment made to an ex-wife, he's
15 entitled to his salary, and it's paid directly. Your Honor,
16 there is nothing wrong with that.

17 THE COURT: Doesn't there have to be some sort of
18 accounting?

19 MR. JOHNSTON: There is.

20 THE COURT: Where is the accounting as to Mr. Dean as
21 to what time he spent and what he's been paid? He has a
22 fiduciary duty to that trust, and he knows, and I think that
23 would include some sort of detailed accounting of whatever he
24 thinks he spent and what he's entitled to.

25 MR. JOHNSTON: A sufficient accounting, Your Honor,

1 but he does have a lawyer representing Sharon Graham
2 Bingham -- his family has represented her family since
3 1936 -- me, watching this whole thing happen. So I suggest
4 that's a reasonable check and balance.

5 THE COURT: Where are they watching it from?

6 MR. JOHNSTON: Well, Your Honor, the fact is --

7 THE COURT: So how much can Mr. Dean take out of that
8 trust?

9 MR. JOHNSTON: Your Honor, he can take out whatever
10 the fees that are reasonable, under the document and under
11 the statutes in Title 11, Washington's Title 11, that permit
12 those fees.

13 THE COURT: Doesn't he have to make some accounting
14 to the trust?

15 MR. JOHNSTON: He does to the trust, but he does not
16 have to make any accounting to LVB.

17 THE COURT: Have those accountings been produced
18 during the discovery?

19 MR. JOHNSTON: I believe that the information that
20 you have here as to the payments certainly indicate that
21 there is a record of them.

22 THE COURT: Well, I haven't seen those records. Has
23 the plaintiff seen those records?

24 MR. JOHNSTON: How did they manufacture this document
25 listing the payments, Your Honor?

1 MS. TSOUHAS: Your Honor, we have not seen an
2 accounting of his reasonable salary, we've not, so-called
3 reasonable salary.

4 MR. JOHNSTON: And they haven't raised an issue by
5 coming up with a total of \$360,000 from the full records that
6 they have on the expenditures that would be anywhere near a
7 reasonable fee for the incredibly difficult things that
8 Mr. Dean has done.

9 THE COURT: That --

10 MR. JOHNSTON: Negotiating that \$10-million
11 reduction, Your Honor, in the Park Place case; negotiating
12 the Centrum settlement; going through the Centrum litigation.

13 THE COURT: Well, we're not here to decide --

14 MR. JOHNSTON: Yeah.

15 THE COURT: -- what's reasonable or unreasonable.
16 What we are attempting to do is find out where trust assets
17 have been going, and whether it's been legitimate.

18 MR. JOHNSTON: Or there is a legitimate basis for
19 even addressing that question, Your Honor, and it seems to me
20 that they haven't done that. For example, they use the
21 testimony from a different case, nine years ago, to cast
22 doubt that fees that are a fraction of what Kirkland & Ellis
23 would charge are unreasonable. I don't think there is any
24 magnitude basis for that.

25 The --

1 THE COURT: Just a moment.

2 MR. JOHNSTON: Sure.

3 THE COURT: Go ahead.

4 MR. JOHNSON: Then, Your Honor, they object to the
5 investment in HyTech, you know, from Mr. Dean's declaration.
6 There was a \$500,000 investment. The \$350- they have here
7 has been repaid. And, secondly, you know the stock is
8 selling at over \$3 a share? You'd be surprised at the
9 investment people. That makes it worth about a million-nine.
10 It seems to me that's a pretty good business investment, and
11 they don't have a single basis for saying the slanderous
12 things they say about HyTech, albeit a startup, one in which
13 we suggest that a trustee -- based upon the language of the
14 trustee drafted by Mr. Roberts, is -- there certainly is no
15 records here.

16 The fact that it is a long way off for distributions, a
17 trustee has an obligation to balance the interest of the
18 current beneficiary with those residual beneficiaries. So
19 long-term investments are not improper, and there's been no
20 case law and no facts to indicate to the contrary.

21 The second issue, Your Honor, is that the transfers and
22 the complaints that they allege are more than four years ago.
23 They did have notice of this.

24 Mr. Weiss and Mr. Solomon have provided nothing to this
25 court to indicate the slightest circumstance that they were

1 misled or acted on anything other than a determination that
2 there was nothing there to go after.

3 Now, the one thing this record shows is that Dan Brown did
4 go after it, and he emptied the cupboard, Your Honor. He was
5 the first one there. Umpqua. I call Dan ultra diligent.
6 But then we had, after Dan Brown, we had Rick Schroeder. And
7 then we had Washington Trust out of Spokane, good lawyers,
8 and they brought our old friend Hugo Esparza, deputy sheriff,
9 who -- I don't know how he maintains his composure in doing
10 his job, but he came down Mr. Bingham's driveway with a truck
11 and some lawyers --

12 THE COURT: I read the brief.

13 MR. JOHNSTON: -- and he was going to get the others.

14 Now, Washington Trust had a judgment of over \$2 million.
15 They evaluated what collateral they could take and what the
16 liquidation value would be, and they agreed to take a million
17 dollars for it.

18 Now, to move forward on that, the documentation of those
19 transfers omitted the wedding rings of Mrs. Sharon Bingham
20 and Kelly Bingham, and those were executed on by Centrum.
21 Mr. Dean, on the courthouse steps, paid \$150,000 for it, and
22 under the theory that you're hearing now, they get to do that
23 again and again and again. The assets of the Binghams did
24 not amount to -- and I think there's sufficient in the
25 record -- did not amount to a total of what other creditors

1 have collected. In other words, everything that could be
2 collected by creditors was collected by creditors.

3 And the legitimate transactions of buying judgments,
4 making settlements, we settled with others without any
5 payments, this was a result of a fraud against the Bingham,
6 and Mr. Dean had been brilliant in recovering it, he's been
7 open, he was honest with Mr. Weiss, and there is no evidence
8 to the contrary. And, Your Honor, we don't think that, given
9 the extraordinary requirements of a preliminary injunction --

10 Now, I just want to go to the damage issue.

11 This company -- Mr. Dean has to have Park Place function.
12 He's watching over HyTech and the investments of this trust.
13 There is no legitimate business without a significant bond,
14 because if the entire flows that have been the status quo for
15 eight years are dried up, there will be damages. And
16 Washington law says that you can't interfere or attack trust
17 property without incurring liability for it. And because of
18 that, we indicate and request the court to consider a very
19 large bond because, to the extent that there is follow-on
20 litigation, we'd like to bond to be sufficient to cover
21 those, because there is case law -- not federal but
22 Washington -- that would limit damages to the amount of the
23 bond.

24 I want to give time and let Mr. McGothlin or Mr. Henrie
25 speak to these issues.

1 Unless the court has any questions.

2 THE COURT: You have about five more minutes.

3 MR. HENRIE: Your Honor, I have five minutes, and I
4 need to share that with Mr. McGothlin.

5 Let me just say this, Your Honor: You were definitely
6 right on exactly where this whole thing completely falls
7 apart, and that is, this was a spendthrift trust, the assets
8 in that trust were exempt from the collection of creditors.

9 Now, you cannot defraud a creditor out of an exempt asset.
10 The statute defines assets as assets that are not exempt and
11 that are not encumbered. There is nothing that's been
12 discussed today that wasn't exempt and wasn't encumbered.

13 You asked how did the trust lose its spendthrift status.
14 I don't know that we ever really got an answer, but
15 apparently one argument is that Sharon was once the trustee.
16 You asked does that destroy the spendthrift status. No. The
17 reason why is because when Sharon was the beneficiary of this
18 trust deed, she had no ability to distribute the corpus of
19 the trust. She was only entitled to the income. She's still
20 entitled to the income to this day.

21 It wasn't an issue that had anything to do, didn't have
22 impact on the exempt status of the assets of the trust.

23 Now, the other argument is, oh, there were some
24 self-settled assets that went into the trust. Well,
25 self-settled doesn't mean assets you acquire from a creditor

1 when you have a secured claim.

2 They talk about these security interests as sham
3 transfers. There's no evidence that there is any sham here
4 at all. All the evidence is is that this trust is a massive
5 creditor of the Binghams, including Sharon Bingham. Any
6 money it ever got, it was entitled to get from Sharon and her
7 children because of its ownership of judgments, because of
8 loans it had made, because of security interest it had.

9 They talk about these transfers being transferred multiple
10 times. They were. Sometimes they paid a bank for them,
11 sometimes they collected a loan on them, and then there were
12 judgments.

13 She talked about, gee, why would a trust acquire these
14 judgments or buy these judgments? You pointed out, "It
15 sounds like a smart thing a lawyer would do." You've,
16 obviously, been a lawyer longer than the lawyer who was
17 presenting this case, including me. It is a smart thing to
18 do to acquire judgments. It is a smart thing to protect the
19 assets.

20 There's been no presentation here that those exempt assets
21 lost their exempt status. They said the assets that they're
22 trying to get you to hold up, to enjoin, are assets that they
23 never could have gotten, they never will, and they haven't
24 shown you any way that they can.

25 I'd love to have more time to talk to you about trusts,

1 Your Honor. Someday I hope I get a chance. I'll turn it to
2 over to Mr. McGothlin.

3 MR. MCGLOTHIN: Your Honor, I'm just going to make
4 three points.

5 I've talked with counsel in the hallway, and with all this
6 going on, the FRCP 26 deadlines for conference are due today.
7 If there is going to be a new complaint, we should probably
8 kick those deadlines out in accordance with your order.

9 The second point I'd like to make on behalf of Henry Dean
10 individually and Cicilia Elali individually are that you
11 dismiss them from the complaint. I think it would be hard to
12 enter a preliminary injunction against them at this time
13 since they're not defendants in the action.

14 THE COURT: Well, clearly, I wouldn't be enjoining
15 Mr. Dean. I would be enjoining the trust.

16 MR. MCGLOTHIN: That's not my client.

17 THE COURT: I understand.

18 MR. MCGLOTHIN: I'm just --

19 THE COURT: Go ahead. Your third point?

20 MR. MCGLOTHIN: Okay. My third point is -- just -- I
21 want to just back up and take a 40,000-foot view of this.

22 The undisputed evidence in Mr. Dean's declaration is the
23 legitimate spendthrift trust character that was set up by
24 Francis Graham for the benefit of her daughter, Sharon
25 Graham, was the shares in this company that was sold when

1 Safeco was bought out by Liberty Mutual and generated \$14
2 million principal for the trust.

3 Ms. Tsoumas said it was \$14 million last year, and it's \$9
4 million now. That doesn't seem like you're bleeding all that
5 much money out of the trust. So there's the same -- the
6 assets have just changed forms from what the original
7 spendthrift character was. The money was paid out to
8 creditors, security interests were taken back because people
9 that are ultimately responsible for having to pay those
10 creditors had to answer to the trust to make the payments for
11 them.

12 THE COURT: Is there any reason why I couldn't, in
13 equity, order an accounting, an inventory of the trust and
14 its assets as of today, to be filed under seal?

15 MR. JOHNSTON: You wouldn't need to order it, Your
16 Honor, you'd just need to ask, and we would provide it.

17 MR. HENRIE: Absolutely, Your Honor.

18 MR. MCGLOTHIN: We tried to do that in Mr. Dean's
19 declaration. We tried to reverse-engineer all the assets
20 that were in the trust today, and go back. And it's under
21 oath.

22 THE COURT: You are all in such agreement. Is there
23 any reason why that couldn't be provided to the plaintiffs as
24 well?

25 MR. MCGLOTHIN: No.

1 MR. JOHNSTON: Confidentiality. We'd like it to be
2 confidential to within the issues in this case, but beyond
3 that, yes.

4 THE COURT: All right. I'm concerned that -- I
5 didn't mean to cut you off, but I'm going to cut you off.

6 MR. MCGLOTHIN: Okay. Then I'm going to sit down.

7 THE COURT: There is a lot here to digest, but where
8 we started this morning was the whole issue of jurisdiction,
9 and what we've, I think, agreed is that the jurisdiction is
10 going to be limited to ancillary jurisdiction. I have no
11 diversity jurisdiction. And it's not entirely clear to me
12 exactly what my jurisdiction and authority is in that regard,
13 and I think that needs to be sorted out.

14 I've directed the plaintiff to file an amended complaint
15 in 20 days. Can you do it in 10 days?

16 MS. TSOUMAS: Yes, we can, Your Honor.

17 THE COURT: Okay. I'll direct that that be done and
18 filed within 10 days. I'm going to direct the trust and the
19 trustee, who I have directly in focus here, to file -- you
20 can file it under seal, but provide counsel with a copy of
21 something that's a representation of the true and correct
22 assets of the trust as of --

23 MR. JOHNSTON: Would a balance sheet as of May 1st
24 work?

25 THE COURT: May 1st, yes.

1 MR. JOHNSTON: It is a balance sheet you want?

2 THE COURT: Yes.

3 I'm going to ask the plaintiffs, when they file their
4 amended complaint, should you continue to do that, I want it
5 verified, and I want a declaration filed by Mr. Weiss and
6 Mr. Solomon as to what facts they believe are incorrect, and
7 Mr. Dean's accounting of what he told them and when he told
8 them and what he gave them and when he gave it to them. I
9 want to know those two gentlemen, if they're still with us,
10 what they have to add.

11 I'm going to defer a ruling on the preliminary injunction
12 at this point, pending further order of the court, and I'm
13 going to want additional briefing within 20 days as to the
14 jurisdictional issues, the plaintiff's views now on what I
15 can and should do.

16 Clearly, I'm not going put a stop sign on the trust and
17 allow it to not disburse funds in a reasonable fashion.

18 One of the problems I have with this case is that I think
19 that the ability to pay some of those judgment creditors at a
20 discount and take those, I don't have a problem with that.
21 You haven't convinced me that that wasn't other than good
22 lawyering.

23 Now, it may have been for the purpose of shielding the
24 trust assets, and it may have been for purposes of creating a
25 large wall against the creditors, and it may have been for

1 purposes which may have been to prevent other creditors
2 from -- but it may also have been legitimate. And the
3 likelihood of success, it seems to me, on the plaintiffs,
4 ultimately, recovering and finding assets and having priority
5 over these other judgments is a real problem.

6 So what I'd like is the amended complaint within 10 days,
7 the accounting within ten days, and further briefing within
8 20 days. We'll have minutes, and we'll tell you what these
9 dates are. But I'd like further briefing on what you think
10 my jurisdiction is, and what you are requesting in the way of
11 injunctive relief, and anything else you want to tell me in
12 not more than 24 pages a side.

13 Let's have simultaneous briefing, and if I need response,
14 I'll ask for it, and I think that's what we can do today.
15 I've spent an enormous amount of time reading all of this,
16 and, ultimately, it may well be that I will -- and give me
17 your views on a special master. Maybe we have a trial here
18 in June, and we just let it all hang out and see what we
19 learn.

20 But when we get all through the end of the day, I'm not
21 sure I'm seeing the plaintiff recovering a lot of money in
22 this case. You might -- you've got a big judgment already,
23 but finding the assets, which aren't encumbered, seems like a
24 long road ahead.

25 That having been said, I'm very concerned with some of the

1 aspects of what I have learned about what Mr. Dean and the
2 trustee have done and how they've created some of these
3 things. And I'm particularly concerned with CCRB, how it was
4 organized, what it's -- it really doesn't have a business
5 purpose. So there's a lot about what we've read that I'm
6 troubled by. Perhaps not as much as counsel, but I'm
7 troubled by some of those things that we've learned.

8 But I'm not prepared to do anything further other than ask
9 for more guidance from you, as I've outlined.

10 Any questions?

11 MR. BORDE: Does Your Honor contemplate further
12 argument after this supplemental briefing?

13 THE COURT: That will remain to be seen.

14 MR. MCGLOTHIN: Your Honor, the declarations of
15 Mr. Weiss and Mr. Solomon should be filed within ten days as
16 well?

17 THE COURT: I think so.

18 MS. TSOUHAS: Your Honor, given I don't know their
19 availability in the next week, we'd ask to have a little more
20 time on those.

21 THE COURT: I said briefing in 20 days, I think.
22 Let's make it 20 days.

23 MS. TSOUHAS: So the complaint in ten days?

24 THE COURT: Ten days, complaint; additional briefing
25 by the parties in 20 days, including the declarations from

1 your side, those two gentlemen, and the accounting from the
2 trust side in 20 days.

3 Let's give you dates certain. So ten days from today,
4 let's say the 15th of May for the amended complaint. One of
5 the things the plaintiff ought to consider is just bringing
6 these claims under the other case, or allowing me to
7 consolidate them, or something. I mean, I -- in any event,
8 15 days -- May 15, and then we'll just say May 30 for
9 everything else that's due.

10 And then as soon as we get all those materials, we'll
11 probably have a status conference or something, and try and
12 figure out how we're going to proceed.

13 Any questions?

14 Have a nice day. We'll be in recess.

15 Oh, I know there is another motion for sanctions. I think
16 what we should do is just stay that motion, not ask for a
17 response at this moment, but...

18 MR. JOHNSTON: That's agreeable, Your Honor.

19 THE COURT: Can we strike it without prejudice?

20 MR. JOHNSTON: I think we can, Your Honor. We've
21 already met the safe harbor rules and so forth, and I think
22 looking at new pleading coming in.

23 THE COURT: We'll strike it without prejudice.

24 We'll be in recess. Have a nice day.

(The proceedings concluded at 12:13 p.m.)

C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 11th day of May 2018.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR
Official Court Reporter